S. HRG. 100-574

INDIAN CHILD WELFARE ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARINGS ON THE INDIAN CHILD WELFARE ACT

NOVEMBER 10, 1987
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INDIAN CHILD WELFARE ACT

TUESDAY, NOVEMBER 10, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:14 a.m., in room 485, Rayburn House Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Murkowski, McCain, and DeConcini.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. Our hearing this morning is on the implementation of the Indian Child Welfare Act of 1978. It has been nearly 10 years since this act was enacted. An ample period of time has now passed to determine whether this act and the courts and agencies which administer it are meeting the expectations of the Congress when the act was enacted.

This act is premised on the concept that the primary authority in matters involving the relationship of an Indian child to his parents or extended family should be the tribe, not the State or the Federal Government. This is particularly true in cases where the child resides or is domiciled within the reservation or jurisdiction of the tribe. The act is not limited to reservation-based tribes. It extends to tribes in Oklahoma occupying lands within former reservation areas, and it extends to tribes in native villages in Alaska whose lands are not held in trust and are not within the former reservation areas.

While the act recognizes the importance of the tribe and its primary authority in matters affecting the welfare of Indian children and their families residing or domiciled on their reservations, the act does not operate to oust the States of jurisdiction in appropriate cases. The act recognizes the traditional role played by State agencies and courts where an Indian child or his family does not reside or is not domiciled on the reservation. Thus, the act makes specific provisions for transfers of cases from State to tribal courts and it requires that States give full faith and credit to the public acts of an Indian tribe.

With respect to cases over which the State retains jurisdiction, it authorizes tribes to intervene in the proceedings and participate in the litigation. It imposes certain evidentiary burdens in State court proceedings, and it establishes placement preferences to guide State placements.

The fundamental premise of the act is that the interest of the child will best be served by recognizing and strengthening the capacity of the tribe to be involved in any legal matters dealing with the parent-child relationship.

The clear understanding of the Congress when this act was enacted was that failure to give due regard to the cultural and social standards of the Indian people and failure to recognize essential tribal relations is detrimental to the best interests of the Indian child.

The high rate of placement of Indian children in foster care or adoptive situations reflects that the system existing prior to enactment of this act was not serving the best interests of the Indian children. The act is founded on the proposition that there is a trust responsibility of the United States to provide protection and assistance to the Indian children and their families and that the most productive means of providing such protection is through the institution of the tribe itself. The purpose of this hearing is to determine the extent to which these objectives are being met.

Without objection, the opening statements of Senators Murkowski and Evans will be placed in the record.

[Prepared statements of Senators Murkowski and Evans appear in the appendix.]

The CHAIRMAN. We have divided the witnesses into five panels for this hearing. Our first panel consists of the following: the ICWA committee chairman of the Affiliated Tribes of the Northwest, Shelton, WA, Mr. Gary Peterson; council member, Fort Peck executive board of Poplar, MT, Mr. Caleb Shields; the spokesperson of the Alaska Federation of Natives, Anchorage, AK, Ms. Julie Kitka; and the vice president of the Tanana Chiefs Conference, Fairbanks, AK, Mr. Alfred Ketzler, Sr.

Will Messrs. Peterson, Shields, Ketzler, and Ms. Kitka take the chairs?

Mr. Peterson.

STATEMENT OF GARY PETERSON, ICWA COMMITTEE CHAIRMAN, AFFILIATED TRIBES OF THE NORTHWEST, SHELTON, WA

Mr. PETERSON. Good morning, Mr. Chairman. I appreciate the opportunity to be here today to address a concern that is critical to the survival of Indian people nationally; that is, the well-being of Indian children and Indian families. I am from the Skokomish Tribe in the State of Washington, and I work for the South Puget Intertribal planning agency. We are a planning consortium that does social and economic development planning on behalf of four small tribes in western Washington.

The tribes that I work for view a direct connection between our ability to succeed economically and the stability that we find in our communities, so they view a direct relationship between economic development and resolving children and family problems in our communities. So they let me work on Indian child welfare problems.

I am not a social worker, but I have had the opportunity to work with Indian social workers throughout the northwest over the course of the last three years. I currently serve as the chairman of the Affiliated Tribes of Northwest Indians' Indian child welfare advisory committee, and also chair the Northwest Indian Child Welfare Association.

The message that I would like to bring on behalf of children and families today is one of a sense of urgency. I think from other people who will be testifying later you will hear that an awful lot of work has gone on among the Indian tribes, a lot of effort has gone into protecting Indian children and families, and we view our ability to successfully do that as a process, a cumulative process that involves a lot of hard work and a lot of contributions from a lot of different people, and we are hoping that this committee will sense the urgency that we are trying to bring and take some prompt action after the hearings today.

We are testifying on behalf of some amendments to the act which we think will strengthen the act and make the job of the protection of children easier for both the States and for the tribes to do in the coming years. We would also like to see the positions of the tribes strengthened in relation to how the Federal programs are operated that benefit Indian children and families. The Bureau of Indian Affairs and Indian Health Service, for example, we would like to have more input on how they operate their programs.

The last piece, I think, of this problem is tribal courts, and we are hoping that the committee will make some recommendations and take some actions that will strengthen the tribal courts and enable our courts to handle the case load that will develop as we assert more and more control and as we do more and more with problems that involve custody of Indian children in our communities.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Peterson appears in the appendix.]

The CHAIRMAN. Our next witness is Mr. Shields.

STATEMENT OF CALEB SHIELDS, COUNCIL MEMBER, FORT PECK EXECUTIVE BOARD, POPLAR, MT

Mr. SHIELDS. Thank you, Mr. Chairman. I am Caleb Shields of the tribal council of the Fort Peck Assiniboine and Sioux Tribes in Montana. I want to express my appreciation for the opportunity to testify on the Child Welfare Act.

Mr. Chairman, the Fort Peck Tribes have been very active in matters affecting the welfare of their children. Two years ago we made substantial revisions in our comprehensive tribal code, in that portion of the juvenile code, which were designed to improve adjudication of Indian child welfare cases. We recently completed, after 2 years of negotiations, an agreement with the State that will permit Indian children on our reservation to receive title IV(E) payments for foster care and also requires the State to assist in providing protective services to Indian foster children.

The agreement is significant in other respects as well. For example, it recognizes our tribal courts' jurisdiction over children who are members of tribes other than the Fort Peck Tribes and provides that the State will recognize tribal foster care licensing standards for purposes of Federal foster care payments.

Our comments on the act will follow the draft bill prepared for this committee's consideration by the Association of American Indian Affairs.

One of the most crucial sections of the act is the definition of Indian child. The act currently limits this definition to children who are members of, or eligible for membership in a tribe. The act implies, although it is unclear on this point, that tribal court jurisdiction is limited to children who are members of that particular tribe. This leaves out two crucial classes of Indian children: children who are Indian but not eligible for membership in any tribe; and children who are members of one tribe but reside on another tribe's reservation.

Abused, neglected, and abandoned children who are members of an Indian community should have their cases heard in tribal court regardless of tribal affiliation. Otherwise, Indian children will continue to be placed in non-Indian foster homes and lose their Indian communities.

There is another compelling reason to recognize tribal court over all Indian children. Some State courts want nothing to do with any Indian children regardless of tribal membership. This is the case in Roosevelt County in Montana, which is on the reservation where Fort Peck is located, where the local judge has refused to hear cases involving Indian children even where those children are not members of the Fort Peck Tribes.

In spite of this, the State social workers will not file these cases in tribal court because at least until recently the State did not recognize tribal court jurisdiction over any children who were not members of the Fort Peck Tribes. Congress must end this "Catch-22" by acknowledging tribal court jurisdiction over all Indian children.

The draft bill does not deal with children who are tribal members but not members of the tribes on whose reservation they reside. We suggest that a section be added to the bill to cover this situation. The tribal court on the reservation where the child resides should have concurrent jurisdiction with the court on the reservation where the child is a member. The tribal court would notify the membership tribe of the pending case and give that tribe the opportunity to request transfer of jurisdiction. If the membership tribe did not request transfer of jurisdiction within a reasonable time or its request was denied, the other tribal court would retain jurisdiction subject to the membership tribe's right to intervene. We already use this procedure at Fort Peck, and it works well.

The draft bill seeks to extend the protection of the act to children who are not members of any tribe as long as they are concerned members of the Indian community. We agree with this completely. However, the definition of Indian child for this purpose should include the requirement that the child be of Indian descent. The act currently provides that where tribal and State courts have concurrent jurisdiction, the State court must transfer a case to the tribal court unless there is good cause to the contrary or unless either parent objects. This part of the act has not worked as intended. The good-cause requirement is vague and gives State courts too much latitude to refuse a tribal request for transfer. The draft will would delete the good-cause requirement and substitute several specific grounds for refusal to transfer jurisdiction.

We generally support this, but request one change: The draft bill would permit a State court to refuse a petition to transfer if the petition were not filed within a reasonable time. This should be changed to give tribal courts and Indian parents a minimum period of 30 days to request transfer. Otherwise, the reasonable-time requirement will be abused by State courts. The draft bill would permit parents to block transfer of jurisdiction to tribal courts only if their objection to transfer were consistent with purposes of the act. The Fort Peck tribes support this amendment. As demonstrated by the recent well-publicized case in Navajo tribal court, tribal courts can handle even the touchiest cases in a fair and orderly way.

An earlier version of the draft bill would have clarified that section 102 of the act which applies to voluntary court proceedings as well as involuntary proceedings. This means that the procedural protections such as the right to court-appointed counsel, access to records, and efforts to reunite the family would apply to proceedings where a parent seeks to give up the child on a voluntary basis.

The Fort Peck tribes support this proposal and urge that the committee include it in the bill to be introduced. This change is much needed for the simple reason that voluntary proceedings are still abused by the States. Parents are persuaded to sign over their children to foster homes rather than having a petition of abuse and neglect filed against them. This is quicker and easier for the States and also allows them to virtually ignore the Indian Child Welfare Act, including such basic protections as notifying the Indian child's tribe.

The draft bill would add a new subsection (g) to section 102 of the act. This subsection would provide that certain conditions, such as inadequate housing and alcohol abuse, do not constitute evidence that a child should be removed from his home. The thrust of this section seems to be that conditions of poverty beyond the family's control should not result in removal of the family's children.

We agree with this, but do not agree with the wording of the subsection. First, we are concerned about including alcohol abuse on the list. The role that alcohol abuse plays in abuse of children and destruction of families should not be minimized. Second, the term "nonconforming social behavior" is too vague and distracts from the focus on the family's poverty.

We suggest that only the language about family and community poverty be retained. The second sentence of the subsection requiring a direct causal connection between conditions in the home and harm to the child should be placed in a separate section. This new section will ensure that parents are not penalized for any conditions in their homes that do not adversely affect their children.

The act establishes preferences in placement of Indian by State courts, both for foster care and adoption. However, there is a good-cause exception to these placement preferences. The draft will would remove this general exception and would substitute several specific exceptions. The Fort Peck Tribes support this change, which will provide better guidance to State courts.

However, we suggest that the request by an older child for a placement outside the preferences be simply a factor, not a controlling factor, in the court's decision.

The draft bill would also prescribe the efforts the State must make to locate a placement within the order of preference. We support this because State courts are too quick to claim that they cannot locate a suitable Indian foster family, often after failing even to contact the child's tribe or members of his extended family.

The draft bill provides that notwithstanding any State law to the contrary, State court judges can permit continued contact between the Indian child and his family or tribe following an order of adoption. The Fort Peck Tribes strongly support this amendment. The amendment should be strengthened even more by a requirement that non-Indian adoptive families be required to take steps to keep the child in touch with her or his Indian heritage. We have entered orders of this kind in the Fort Peck tribal court and have been pleased with the results.

The act gives parents, custodians, and the tribe the right to file a petition to invalidate a State court order if that order violates particular provisions of the act. The placement preferences are crucial to the purposes of the act, and furthermore they are violated frequently. The Fort Peck Tribes strongly support section 105 of the draft bill which would add violation of the placement preferences as grounds for invalidating State court orders.

Section 105 of the draft bill also provides that petitions to invalidate a State court order can be brought in Federal court. We support this provision because in our experience State courts are very slow to invalidate their own orders in Indian child welfare cases. The draft bill would add a new section 101(f) to the act, providing that nothing in the section 101 authorizes the State to refuse to offer social services to Indians on the same basis that it offers them to other citizens of that State. The Fort Peck Tribes strongly support this provision.

In Montana, the attorney general has used the act as an excuse to rule that the State cannot provide services to Indian children who are within tribal jurisdiction. Although we have made some progress on this issue through our foster care agreement with the State, there is still great reluctance to acknowledge a State's obligations to its own Indian citizens.

Now that the BIA social services budget is so limited, it is simply not realistic, much less legal, for States to assume that the BIA takes care of all Indian social service needs. States must be required to provide needed services to Indians.

The Fort Peck Tribes have a concern about the Indian Child Welfare Act grant programs for the grants that serve children on and near Indian reservations. Indian tribes and organizations have equal priority. This has created problems for us at Fort Peck. Until 2 years ago, we were receiving grants to operate a foster home licensing program. We lost that grant and at least other tribes lost theirs as well in Montana. At the same time, an urban Indian organization began to receive a sizeable grant.

We have no objections to urban organizations receiving grants for off-reservation programs, but we feel strongly that tribes should have first priority to serve children on and near Indian reservations. We need these grants to assist us in exercising jurisdiction over our children. Tribes that have this direct and crucial responsibility should have primary access to grant funds.

Mr. Chairman, I thank the committee for the opportunity to testify, and I would be glad to answer any questions you might have.

[Prepared statement of Mr. Shields appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Shields.

Ms. Kitka.

STATEMENT OF JULIE KITKA, SPOKESPERSON, ALASKAN FEDERATION OF NATIVES, ANCHORAGE, AK

Ms. KITKA. Good morning, Mr. Chairman, members, and staff. My name is Julie Kitka. I am special assistant to the president of the Alaska Federation of Natives. The Alaska Federation of Natives is a statewide Native organization in the State of Alaska, representing the regional corporations set up by the Alaska Native Claims Settlement Act, a number of the nonprofit regional associations in the State, and almost 98 percent of the villages within our State.

I am pleased to be able to testify here today on behalf of AFN. We will be submitting written comments specifically on the technicalities of the amendments before you.

I wanted to bring to your attention today that this issue is one of the most important facing Alaska Natives. I have been spending considerable time working on our land-related issues and amendments to the Alaska Native Claims Settlement Act to try to resolve the different 1991 issues, but the issues dealing with and affecting Alaska Native children ranks just as high as the issues in protecting our land base.

Approximately 98 percent of all the litigation Alaska Natives are involved in at this point are not dealing with our land and resource issues, with subsistence or other related issues. The litigation is dealing with Alaska Native families and Native organizations trying to protect their rights to keep Native children with their families and extended families. This is something that cannot be allowed to continue—the tremendous litigation, and the waste of resources of Native people and communities just to try to protect children in their communities.

There is a whole complex array of problems dealing with children in our State: 1) the higher rate of alcohol abuse, 2) domestic violence, 3) sexual offenses, and 4) the high number of Alaska Native families which are split up by native men going into the correctional system for a variety of reasons. All these have tremendous impacts on the children in our State.

We would like to see a comprehensive approach dealing with the social service needs and in strengthening ways of keeping Alaska Native families together. We have several suggestions on this, and one which goes beyond the scope of the amendments before you today but which we feel is very important.

In the late 1960's, Congress took a leadership role in establishing a Federal field commission to take a look at the status of Alaska Natives. We would like to urge this committee to take a leadership role in having some type of commission or organization set up to do a field examination in the State of Alaska on the status of Alaska Natives and their families.

We would like them to report on what is going on in the communities. For example: what is causing almost 50 percent of the inmates in the State of Alaska to be Alaska Natives? Why are 50 percent of all the Alaska Natives that are in the correctional centers from one area of the State?

All these things combined are impacting our families and our children. They are primary causes on why our children are being brought into the State system and in, either foster care or being circulated around the State outside of native families.

This field commission or whatever title you call it could come to Alaska and travel to the major regional areas in our State and some of our villages and report back to the Congress their findings and recommendations.

In addition, we would like the committee to consider funding a statewide Indian child welfare coordinating project for Alaska Natives. The purpose of this project would be to coordinate Alaska Native positions on these amendments, and coordination of ICWA issues in our State, in order to deal with the disparity among the regions in our State.

There are some areas in our State which are very well prepared and are dealing with the implementation of the Indian Child Welfare Act well. There are some positive things going on. We are very pleased with the Governor of the State of Alaska, and also Commissioner Munson, who is going to be testifying later, in their efforts in continuing negotiations for a model State-tribal agreement.

However, we do need a statewide coordinating project because the disparity in the regions is such that those areas in our State which need the agreement or need better representation in dealing with Indian child welfare issues are the ones that are not getting the representation. A statewide project would facilitate that, especially for those areas of greatest need.

There are several other technical issues which we would like to address. One deals with the whole area of concurrent jurisdiction within the State. Jurisdiction deals with Alaska Natives and their rights to tribal self-government. We feel this is an issue which must be addressed by this committee to mitigate our continuing with this tremendous amount of litigation.

Local control of issues such as how native people raise their children and address child welfare issues is absolutely essential. Our councils in our villages must have the authority to make critical decisions on the ground. Areas are remote and also because there are real clinical benefits for local control and native councils being able to make these decisions. When you are talking about communities being ripped apart by alcohol and drug abuse and all the other factors, there is a tremendous healing process that must take place in our communities. Reassumption of concurrent jurisdiction or local control will facilitate this healing which must take place in our communities.

Another issue which must be addressed in the amendments is the ability to transfer children's cases from the State courts to tribal courts. Right now we don't have many tribal courts in our State, but there is a tremendous interest in developing competent tribal courts, and again with the idea of local control. We would like to have a mechanism to facilitate the transfer, as different areas become able to deal with this on the local level. We would like to have the tools from the Congress in order to have this happen.

Another issue is with voluntary proceedings. That, in our view, is a major loophole in the Indian Child Welfare Act and one that must be fixed. There is a tremendous amount of native children which are leaving native families and communities and going to non-native families through voluntary proceedings. This must be addressed.

Another concern which is raised by a number of native organizations in written testimony, deals with the issue of notice. Like I mentioned earlier, we are involved in a State-tribal negotiations process with the State of Alaska dealing with a lot of procedural issues. The notice requirement is a crucial component to the agreements. Unless they are aware that the proceedings are taking place, native organizations and villages aren't going to be able to participate.

We would like to have two tribal notices sent, one to the villages and also one to the regional association (which may be providing the technical assistance or the staff work on behalf of the villages). Alaska is unique in that with all our villages we have regional associations which provide a lot of services and facilitate things for the villages. A dual tribal notice would ensure that we have native representation at State proceedings that affect native children.

The last issue which I wanted to raise deals with the funding issue in the Indian child welfare grant process. Right now it's on a competitive process, and basically with a competitive bid process, you're talking about those groups which are best able to put together a funding proposal are going to receive ICWA grants.

We feel that Indian child welfare issues, are spread throughout our State and every single one of our areas should be entitled to core funding on Indian child welfare and should not be competing against one another. The problems are different, but the needs are still there statewide. We would like to see a change instead of competitive bidding, that there be a core funding established.

That concludes the concerns that I would like to address at this time. We will be submitting written testimony which outlines the specifics on the amendments before you. We pledge our utmost cooperation, our legal counsel or whatever, to flesh out whatever amendments that could help to make ICWA work better in Alaska. Thank you.

The CHAIRMAN. All of your written statements will be made part of the record.

Thank you very much, Ms. Kitka.

Our next witness is Mr. Ketzler.

STATEMENT OF ALFRED KETZLER, SR., DIRECTOR, NATIVE SERVICE TANANA CHIEFS CONFERENCE, FAIRBANKS, AK

Mr. KETZLER. Thank you, Mr. Chairman. My name is Alfred Ketzler. I am director of native services for Tanana Chiefs Conference, a regional consortium of 43 interior Alaskan tribes. I have also been a board member of the Association on American Indian Affairs for the last 15 years. I wish to thank the committee for the opportunity to address you today on the implementation of the Indian Child Welfare Act.

In 1987, 8 years after passage of the Indian Child Welfare Act, the problems which the act tried to rectify have worsened in the State of Alaska. The 1976 survey done by the Association on American Indian Affairs which ultimately led to the enactment of the Indian Child Welfare Act found that there was an estimated 393 Alaska Native children in State and Federal out-of-home placement. In 1986 that figure had risen to 1,010, which represents a 256-percent increase. During the same period of time, the total population of Alaska Native children increased by only 18 percent.

The figures are even more disturbing when one considers that the Alaska Native population is only 14 percent of the total Alaskan population. Yet, Alaska Native children make up 49 percent of the State's out-of-home placement. The disproportionate adoption of native children is equally appalling. For the year 1986, out of all the children placed in adoptive homes by the State of Alaska, 64 percent were Alaska Native.

As the figures indicate, the removal of our children from our homes and culture continues at a rate that far exceeds our population. The problems in Alaska continue to worsen for native children.

After removal of the native child, his or her chances of being placed in a native home are not very good. At best, the child has a 59 percent chance in those areas of the State that are predominantly native. In the more urban areas of the State those figures drop to as low as 4 percent. These statistics, which are based on raw data obtained from the State of Alaska, demonstrate that native children are being removed from their homes and placed in non-native placements at a greater rate today than estimated in 1976. In 1976 Congress was alarmed. We believe that in 1987 Congress should be outraged and take steps to strengthen ICWA and to stop this in the future.

Tanana Chiefs Conference, Inc. has attempted to enforce the ICWA, with only marginal success. Our region is one of the best in placing native children in native homes. But still, over 54 percent of our children in State foster-care are in non-native homes. Sadly, many of these children have relatives who are capable of taking care of them and have requested the children to be placed with them, but are denied by State officials.

There are some reasons why we have only marginal success. The biggest is the lack of resources. Title II funds available under ICWA are competitive. Tribal programs are funded based on their grant-writing ability, not on need or on the quality of the tribal program. This means that tribal programs are sporadically funded and we do not know if it will be funded from 1 year to the next. An average child protection case will last for 2 years, but it is not clear whether our tribal programs will survive long enough to provide services to a child in tribal protective custody.

Our tribes are denied any Federal assistance for tribal foster care. The State of Alaska receives Federal support for the State foster care under title IV(E) of the Social Security Act and may share that with tribes if it wishes. However, the State of Alaska has decided not to negotiate any agreement which would allow Federal assistance for tribal foster care. Consequently, our tribal foster care is either voluntary or funded under some other program for which the child might otherwise be eligible.

Another problem in our enforcement effort is the time litigation takes. Often, if we challenge a placement in State court, the litigation takes between 2 and 3 years. TCC villages have been faced with the difficult problem of overturning an adoption on a foster care placement only to find that the child has bonded to the foster adoptive family.

Should the tribe remove the child, causing problem for the child now, or allow the child to stay and cause the child pain in adolescence and adulthood resulting from the child's alienation from his or her people?

In considering litigation, the State will often engage in this type of moral blackmail, asking the tribe to allow an illegal placement and avoid causing the child the trauma of uncertainty over his or her future which prolonged litigation will cause.

ICWA needs to be strengthened. Title II funding for tribes under the act should be stabilized and allocated to tribes in a similar manner as self-determination contracts, which is Public Law 93-638. Federal foster care assistance needs to go directly to tribal agencies and should not be subject to State veto.

Finally, the loopholes and legal ambiguities that allow extended litigation needs to be tightened to ensure that native children are removed from their homes only when absolutely necessary and placed in tribal foster homes or other native homes.

While these are our major general concerns, we will also submit more detailed suggestions to the committee shortly. We thank you for your interest and urge the committee to take action to strengthen the Indian Child Welfare Act.

[The Prepared statement of Mr. Ketzler appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Ketzler.

We will take a short recess. There is a vote pending at the present time. I will be back in a few minutes.

[Recess.]

Senator MURKOWSKI. [presiding] At the request of Chairman Inouye, I would like to call the meeting back to order and proceed with the agenda. It is panel one, I believe, Mr. Gary Peterson, ICWA committee chairman, Affiliated Tribes of the Northwest, Shelton, WA; Mr. Caleb Shields, council member, Fort Peck executive board, Poplar, MT; Ms. Julie Kitka, spokesperson—spokeswoman, excuse me—for the Alaskan Federation of Natives, from Anchorage.

We welcome your testimony. I am going to have to be leaving shortly for the State Department, so please excuse that. Your statement, I gather, has been given, and there are some questions posed by the chairman. Is that correct? I wonder if you could respond with regard to private adoption agencies and how they handle Indian children under the Child Welfare Act.

I guess we are interested in recommendations that you may have to remedy a problem that has been identified. Could you identify the problem and what your recommendations would be? Julie, do you want to try that one?

Ms. KITKA. The problem with voluntary proceedings is that it is a loophole in the Child Welfare Act in which the notice requirements do not—or at least have been interpreted—not to be in effect. We would like to see that the Native parent that is involved in a voluntary proceeding have most of the same rights as a parent in an involuntary proceeding. We would like them to have the right to appointed counsel. We would like for the agency which is trying to facilitate the voluntary adoption to have to show a strong standard that culturally appropriate remedial and rehabilitation services have been provided in order to try to keep the native family together. Voluntary placement should be a last resort as opposed to a first option in dealing with a difficult family situation.

We feel very strongly that Native families should be given assistance to stay together as a unit and keep Native children in Native families and extended families. The voluntary proceedings is a loophole in the act and that provision needs to be tightened up.

Senator MURKOWSKI. What kind of legal representation is provided to native families in the child welfare proceedings as they are currently constituted?

Ms. KITKA. Well, basically in Alaska not all of our villages and regional associations have legal representation which deals with Indian child welfare. We have several areas of the State which have tribal lawyers who follow these cases and represent native families in court on a day-to-day basis. However, there is still a tremendous lack of legal representation in these Indian child welfare cases on behalf of native families.

In addition, some areas of the State a native representative representing the village's interests have been denied because they do not have standing as a lawyer. They have been denied being able to provide testimony, relevant facts or bringing in different witnesses.

Senator MURKOWSKI. The last question—and the chairman is back.

Mr. Chairman, I have proceeded to just ask a couple of questions of the witnesses.

My last question is with regard to adoption or proposed adoption or placement of native children in non-native homes and the willingness of non-natives to adopt or initiate proceedings of adoption, it is my understanding that that is something of a concern to the native groups, in Alaska at least, where I have some familiarity. I am wondering if there is a firm decision with regard to the placement of native children in non-native families on a permanent-adoption concept.

Ms. KITKA. Prior to the implementation of the Indian Child Welfare Act, thousands of native children were shipped out of the State of Alaska and adopted by non-native families. The current situation is that because of the Indian Child Welfare Act, they are not shipped out of State but they are still circulated within the State. There is a lot of procedural issues which have not been addressed in order to try to stop this and keep children in their communities or with their extended families.

Until quite recently, the State of Alaska would have no qualms in placing, for example, a Yupic Eskimo child with a Tlinget Indian family and think that they were in compliance with the Indian Child Welfare Act. What you're basically talking about is two different cultures. The State of Alaska has made vast improvements in their implementation, but we have got a long way to go.

Senator **Murkowski**. Mr. Chairman, thank you for the opportunity to pose my questions. I want to thank the witnesses, particularly Mr. Al Ketzler, who is a long-time acquaintance of mine, and Ms. Julie Kitka, both from Alaska.

The **Chairman** [presiding]. I thank you very much.

Senator **Murkowski**. I have a statement for the record that I would like entered, Mr. Chairman.

The **Chairman**. Without objection, so ordered.

Senator **Murkowski**. Thank you.

The **Chairman**. Throughout your testimony all of you have expressed concern over the large numbers of native children being placed in non-native foster homes or permanently adopted by non-native families. So that the record would be complete and so that those who are not acquainted with the problem will understand the reasons for your concern, I will call on all of you to tell me why it is bad for native children to be placed in non-native homes.

The first witness, Mr. Peterson.

Mr. **Peterson**. Mr. Chairman, I think there are many, many reasons why it is a problem. I guess my non-social worker, non-professional response would be as a member of a reservation community. Having lived in that community all of my life and in many cases having known of families, where all of the children were adopted or placed in foster care, and I remained in that community as those children moved out.

Seeing many of those children finding their way back to our community as teenagers, as young adults, and just viewing the problems that they have had readjusting to getting back into our communities, and in many cases being familiar with the children as they were in non-Indian homes and the problems that they have in those homes before they find their way back to our communities, I think to me the problem is that the children find that they are not fitting, that they don't feel like they belong in the place where they are.

I think they recognize that they are Indian, but they're not sure what that means. And when they come back to our communities, I believe that they have been subject in a lot of cases to a lot of the stereotypes that people have of Indians. So when they come back to our communities and they're trying to figure out how they belong there, they lean on those stereotypes.

So in a lot of cases I believe that they think that if Indians drink, which is one of the stereotypes of Indians, that then they're going to drink the most, that they're going to drink more than anybody else does on the reservation, and they end up involved in extreme activities like that that they believe are a part of Indian identity just because of the stereotypes that they have been subjected to.

Until they find their way through that, they have a lot of problems. I think the reservation community is a place that can help them find their way through that which they can't get any place else.

The CHAIRMAN. I presume you are speaking of children being placed in foster homes, returning to reservations?

Mr. PETERSON. Yes; And I think in a lot of cases children who were adopted, when they reach a certain age and start deciding for themselves who they are and what they want to be, find their way back to our communities as well.

The CHAIRMAN. Mr. Shields.

Mr. SHIELDS. Mr. Chairman, I wouldn't say that placement of Indian children in non-Indian homes is all bad. Clearly, there are cases where, even on the reservation at Fort Peck, Indian children are adopted by non-natives within our community. The same as they are with foster home placement. Indian children are placed in non-Indian homes in foster care, and some of them are good, some are bad, just the same as with Indian foster parents.

I think what we have tried at Fort Peck is when children are placed in non-Indian homes, whether foster care or adoption, we have required that some contact be retained with the tribe of that child, returned periodically to visit relatives.

One of our biggest problems that has to be addressed is the expanding role of foster parents. If we had enough of those qualified homes, there wouldn't be a need for all this adoption. If we could have the expanded definitions of the extended family, which is one of the amendments supported by the Association of American Indians to expand that definition, we wouldn't have as much problems as we do now.

But in any case, if there could be that requirement that the Indian child would not lose contact with his tribe or his people, in the adoption process, it would be much better for the child and for the tribe and their extended family that reside either on or off the reservation or near the adopted child.

The CHAIRMAN. Are you testifying that in Fort Peck the reservation retains jurisdiction over the child?

Mr. SHIELDS. Yes.

The CHAIRMAN. Even if he enters into a non-native foster home?

Mr. SHIELDS. Yes.

The CHAIRMAN. And that is by agreement?

Mr. SHIELDS. Yes; in the adoption order.

The CHAIRMAN. And that child is required to return to the reservation.

Mr. SHIELDS. That's correct.

The CHAIRMAN. On a regular basis?

Mr. SHIELDS. That is correct.

The CHAIRMAN. How often is that?

Mr. SHIELDS. At least once a year. In the summer months, where this one child returns every summer for a short period of time.

The CHAIRMAN. Is that the same in other areas, Ms. Kitka?

Ms. KITKA. Your question was how do we feel about Native children being adopted by non-Native families. We certainly realize that in some limited circumstances that is necessary. We think that there is a lot of circumstances in which it is unnecessary. The disadvantage of Native children going into non-Native families is what they miss out on. It's not the care that they're getting in the non-native family, it's what they're missing out on.

One of the factors, a part of being Indian and part of being Alaska Native is the richness of the history, richness of the traditions, of extended families. For example, a child would miss out on the different legends and stories which their grandfather might tell them, or they'd miss out on helping their grandmother do different activities with their family, and in the community.

They would miss out on all the beautiful things about being a Native, all the richness and diversity of their culture. They would miss out on their language, especially certain traditional areas in the State where English is a second language as opposed to a primary language. If a child is taken out of that area, they will be very confused because they will have had their early years of their training in their home Native language. They will be going to another situation which may have no appreciation for all the language skills and the talents that that child has developed.

The most important concern for our children is the development of a good self-esteem. We feel that with good self-esteem a Native child can succeed and do anything that they want anywhere that they want—but they've got to have a good grounding. In order to have a good grounding, we think it's essential that they stay within the Native community where people love them and care for them and are able to give them that extra richness.

The CHAIRMAN. What if there were no foster homes in the villages and tribes?

Ms. KITKA. There are foster homes, but there needs to be a concentrated effort to identify more families and get lists of these families and get them circulated throughout the area. If there is not a family in a particular village, there are clusters of villages which are of the same ethnic background, same language, same culture, and there are families in the neighboring villages. There can be enough foster homes. Not enough attention has been on identifying these Native families and circulating the lists around to the appropriate State agencies and Native organizations.

Native families are willing to be foster homes—they are just not aware of how you go about it.

The CHAIRMAN. Would the Fort Peck arrangement improve the situation?

Ms. KITKA. Pardon me?

The CHAIRMAN. Would the arrangement that we find in Fort Peck, where the children are required to return to the reservation on a regular basis, would that arrangement help your situation?

Ms. KITKA. Well, I think that in some aspects that would without a doubt help. However, the practicalities of that, because of the great distances involved in the villages in the State, it would probably be very cost-prohibitive. If you talk, for example, of a child being in Anchorage and their home village is, for example, Kaktovik on the North Slope, the cost might be prohibitive. But I think it would be a positive step.

The more logical step would be to keep the child in that regional area, in one of those neighboring villages surrounding their home village if there is no foster care, rather than having them be in a more distant place from their home village.

The CHAIRMAN. Mr. Shields, who pays for the transportation?

Mr. SHIELDS. The adopted parents.

I would like to add, Senator, that we would prefer the increased programs that foster home licensing on the reservation rather than adoption. But there is a shortage of foster homes at the present time, and until these other things happen, expanding of the extended families and things, and working out agreements with the States on payment and what not, there will be a need for adoptive parents. But we would prefer expanded foster home programs.

The CHAIRMAN. I have my own reasons that native children should to the greatest extent possible, be placed in native homes. But I wanted to hear from you because nowhere in your testimony do you tell us why it is bad to have native children placed in non-native homes.

Mr. Ketzler.

Mr. KETZLER. Mr. Chairman, I guess I would have to equate that as parallel to my own life, where I was a child of a German father and a Athabascan mother, and what happened was that my father died when I was very young. But I feel that I missed both parts of the best of their culture. I don't speak the language of the Indian nor do I speak German. I end up with English, and I look at children that are adopted out from native families to other races and see that they lose both and they don't fit into the other. Granted, they can receive the love and so forth, but it doesn't make up the difference. The problem I had was that it took me well past my 21st birthday to understand who I am.

The CHAIRMAN. All right.

I am sorry I wasn't here when my distinguished friend from Alaska asked questions, but if he has asked these questions, just tell me.

Mr. Peterson, you spent much time advising us of the inadequacy of funding. Can you elaborate on what you mean by inadequate funding, in what areas, and how much would make a difference?

Mr. PETERSON. Mr. Chairman, it's been an ongoing problem of not only inadequate funding but the way that the funding exists and is managed.

The Bureau of Indian Affairs, for example, has a title II program that provides money for tribes to operate Indian child welfare programs, but annually the Bureau makes an effort to cut that money. It's $8.8 million for all the tribes in the nation. Every year they have attempted to reduce that amount, as meager as it is. As poorly as it meets the need, they have tried to reduce that amount.

So it hasn't been consistent, and it brings into question the commitment on the part of the Bureau to Indian children and families. One year, for example, they attempted to reduce the budget by 50 percent, from $8.8 million to $4.4 million, which would have been disastrous.

The other part of the process involves the competitive nature of the program so that tribes end up writing a proposal and they don't know from year to year whether their program will exist or not. In some cases the tribes have even closed down a program and then received funding and so they had to start the whole thing back up again. That creates a lot of disruption in the management of a program. It doesn't enable the tribes to do any effective, long-range type of planning.

There is also a lack of tribal input into the funding process. There was some money made available for fighting drug and alcohol abuse on Indian reservations, and the Bureau of Indian Affairs and Indian Health Service were the agencies that were designated to manage that program. Basically what happened is that they increased the staffs at Indian Health Service and BIA to do what, I don't know. In the case of the alcohol money, they mandated child protective service teams that will be Federal employees but we're not sure about how effective those programs can be or how they're going to fit into the programs that we operate. So there have been a lot of problems with it over the years.

The CHAIRMAN. I gather that the State of Washington and the several tribes of the State are in the process of reaching an agreement on how to implement this act?

Mr. PETERSON. It took us four to five years, but we did work out a very comprehensive agreement with the State. And as a matter of fact, we are planning a signing ceremony of that agreement on November 23 in the State of Washington with the Governor. The agreement basically is going to implement the act. A group of social workers in the State met to identify barriers to them doing their job effectively, and they put together what they would propose as an agreement, and then we negotiated that with the State of Washington.

There have been several spinoffs from that that involve amendments to State law that relate to foster care, for example, where the State amended their laws to recognize the right of the tribe to license foster homes and committed the State to make payments for those licensed homes. The homes are licensed based on tribal standards.

So we do have an agreement in the State, and we are real proud of all the work that has gone into that and how comprehensive it is, and we are in the process of implementing that agreement right now.

The CHAIRMAN. With that agreement, would some of your concerns still exist?

Mr. PETERSON. I think that the agreement, again as a part of the implementation process, in order for us to succeed, it's going to take a lot of commitments from other people. The State of Washington has met some of that commitment, the tribes have met a lot of the commitment, and so we're looking now to this committee, for example. Yes, we will still have the concerns and will still need some of the things that we are recommending—the amendments to the act and some of the funding, resolving some of the funding problems—to enable us to continue to meet the needs of Indian children and families.

The CHAIRMAN. Mr. Shields, we were advised that recently you had a rather bad case involving a group foster home in which numbers of minor native children were abused by the people running the foster home.

Mr. SHIELDS. That's correct.

The CHAIRMAN. I believe there was a criminal case, and these people are now serving long prison terms.

Mr. SHIELDS. That's correct.

The CHAIRMAN. Can you briefly tell us the nature of this case and how you hope to prevent its reoccurrence?

Mr. SHIELDS. Mr. Chairman, this group home was established, I believe, in 1971. This was prior to the tribes having any foster homes, any type of program. We have no other place to send children, so they were kept in group homes with house parents. That program at different times had up to 26 children in the three homes that were available. That is when these incidents started occurring. There was a man and wife, house parents in these homes, watching and taking care of the children.

Since that time, with the foster care licensing program, there has been less and less children placed out in that group home. In fact, it has got to a point that for all practical purposes the group home is closed now because they have no children to watch. All the children are placed in foster homes.

Nevertheless, there is still going to be a need for some type of a group home because there are some children that cannot be placed in foster homes; either because of their behavior or what not, you know, foster parents don't want the children.

So what we are looking at, whether they are neglected or abused, and with that grant that we received through the Bureau of Indian Affairs, we are looking at the research and evaluations that are necessary to have a safe group home for children that cannot be placed anywhere.

One of the things that we are looking at is rather than having house parents, that we would have matrons watching those children, to minimize instances of abuse, especially sexual abuse. We feel that some type of a matron program would eliminate any future incidence of that kind.

The CHAIRMAN. Do you have any program to monitor or supervise these homes, whether they be group or separate?

Mr. SHIELDS. Well, under that memorandum of understanding between the BIA and the IHS which we just implemented recently, we have that abuse-and-neglect team, and we have the staff that is provided under the MOU. We have a special prosecutors and investigators, counselors to oversee and prosecute any incidence of this kind in the future.

The CHAIRMAN. But that team comes into action when abuse has been made known.

Mr. SHIELDS. Yes; that's correct.

The CHAIRMAN. Do you have any group that on a regular basis would visit and monitor these homes?

Mr. SHIELDS. The foster homes?

Mr. SHIELDS. Yes; we have that now. Between the BIA and the tribal foster home licensing program—and I was going to mention this on the funding aspect, we started out with the foster home licensing grant for a couple of years, and then being competitive or not, we had lost the grant. Foster home licensing in that type of program is so important to the tribes, and under our priority system the tribe picked up that program under tribal funds.

Now, if the tribe was not able to do that, if we were unable to continue a foster home program, we never would have been able to get this agreement with the State providing foster care payments and the protection services in line between the tribe and the State.

But our present foster home licensing program, which is a tribal program funded by the tribes, does do evaluations and home visits to try to minimize any abuse incidents that might occur.

The CHAIRMAN. I ask this question because there are good and bad foster parents and good and bad matrons. I think just as many matrons have been involved in abuses as parents, and without any sort of monitoring or periodic checking, these abuses will never surface.

Mr. SHIELDS. Right. The group home, if it does reopen, would be under the foster home licensing program, as I understand it.

The other thing that we're looking at is we have a couple of organizations on the reservation—Voices for Children, for one—that have really been helping the tribes and demanding oversights on foster care and abuses and neglect. We would like to see that in establishing oversight hearings on the reservation by the tribe, by the tribal Government, that those type of things would be placed within the court systems and the programs to monitor activities, to monitor qualifications and eligibilities of foster parents and background checks, you know, in-depth background checks. We hope that with what is coming forward down to the Fort Peck tribes now, that we would be able to make some big corrections that weren't there before.

The CHAIRMAN. You have established a program to assist victims of sexual abuse, and it has been described as being a very good program. Could you tell us what is involved in your program?

Mr. SHIELDS. The neglect-and-abuse team has just started within the last month. These were individuals who were recommended by the tribe and hired by the Indian Health Service and the Bureau of Indian Affairs, as I said, to investigate and prosecute child abuse and neglect. Along with that is provided the counseling and follow-up, the things that would be needed for these children.

One of the important things of that neglect team, I think, is going to be sort of a team that is going to be working primarily for the benefit and protection of children and not to be controlled by any faction which may exist on the reservation, whether it be tribal Government or the community. They are there to do a job, and that is to protect the children.

The investigation is, I think, the real important aspect of the abuse and neglect. Before, there was always poor investigation, investigation that never took place when it should have, and for different reasons. I think the enforcement part of that neglect and abuse is going to be the key to deter future incidents.

The CHAIRMAN. You have reached an agreement with the State of Montana. Is it just with your reservation, or does this cover all other reservations?

Mr. SHIELDS. No; it's just with the Fort Peck Reservation because we have been negotiating with the State for about two years.

The CHAIRMAN. Are the other reservations doing the same thing?

Mr. SHIELDS. I think they may be on that track now, Senator. At least we would hope, because you have to look at children all over the State. It is a problem trying to get the State to agree to such a negotiated agreement. We would rather, Senator, have funds funded directly to the tribe. You know, if that ever came about, we would prefer that. But in the meantime we thought it necessary that we take the lead in Montana to resolve those problems between our tribe and the State to provide the things that are necessary for them.

The **Chairman**. So, under this agreement, the cost of support for the child is borne by the State?

Mr. **Shields**. Yes; also, part of that agreement, as I had in my testimony, I believe, is the recognition of our standards for foster care.

The **Chairman**. And the State makes direct payments to foster parents?

Mr. **Shields**. Yes.

The **Chairman**. Not through the tribe?

Mr. **Shields**. No; directly. Especially where the children are not members of the tribe.

The **Chairman**. I would now like to ask our Alaskan representatives. I am not certain whether my friend from Alaska asked these questions. But am I correct that 96 percent of urban native children have been placed in non-native homes?

Mr. **Ketzler**. Yes; well, it depends on the area that you look at in Alaska. But that is the numbers that we received from the State, and our determination is that either 96 are non-native or four percent are placed in native homes in urban areas.

The **Chairman**. And that 40 percent of native children in reservations or in native villages have been placed in non-native homes?

Mr. **Ketzler**. Yes; that would be about 49 percent.

The **Chairman**. It is 49 percent. Do you have any procedure or program by which you monitor or assume jurisdiction over these children?

Mr. **Ketzler**. A few of our villages have set up their tribal courts now, and they have assumed jurisdiction over some of the children. But the majority of them, the villages that we deal with, don't have this system. So that what happens is that with one agency in Fairbanks that deals with a huge area covering the whole interior of Alaska, and to give you an idea of how big it is and the cost, to go from Fairbanks to Holy Cross, which is our furthest village, costs $572 round-trip air fare, plus it takes a whole day to get there.

So the problems that we have in trying to monitor or sending people out to investigate these cases is just tremendous.

The **Chairman**. Is the placement of these children under the jurisdiction of the State courts?

Mr. **Ketzler**. Well, again it depends on if the village has a tribal court. That the State has recognized, after losing a couple of cases in the State Supreme Court and the Ninth Circuit Court, that the tribal courts do have jurisdiction. But in others, the State has jurisdiction.

The **Chairman**. Ms. Kitka, if I recall, you stated that you are having troubles with tribal courts in Alaska?

Ms. **Kitka**. Yes; it's my understanding that the only tribal court which the State recognizes is on Annette Island, the Metlakatla tribal court, because they are a recognized reservation. The other tribal courts are having difficulty with the State as far as recognizing whatever decisions they make. Our overall goal is we would like——

The **Chairman**. Why is that?

Ms. KITKA. Well, the State does not at this time recognize concurrent jurisdiction. There has been a couple of court cases which have basically come out—and this is also what the State of Alaska has argued in court briefs—that there are no tribes in Alaska, that Public Law 280 took care of the issue of tribes in Alaska, the Alaska Native Claims Settlement Act took care of tribes in Alaska and that there is no Indian country.

So the whole issue of jurisdiction is something that causes tremendous litigation in a State in which you have native villages and native organizations saying, "Yes, we have some rights under this act," or, "We want to assert this and we want to assert that," and the State coming back trying to beat you back down.

We are involved right now and for the last year and a half, almost 2 years, involved in negotiations with the State of Alaska on some State tribal agreements. And basically we are very pleased with that process. Governor Sheffield and the past administration was instrumental in getting that started, and Governor Steve Cooper has continued on with this.

Basically, what we are working toward is a working document which would implement some of the procedural things under Indian Child Welfare between the villages and the State. But there is a couple of key issues which aren't being addressed in the negotiations, and that deals with the funding issue, the jurisdiction issue, and tribal courts. The tribal courts, like I said, it has been one of our goals that every single village council or cluster of village councils or regional area should be able to handle their own child welfare matters. That has been kind of our goal.

In addition to that, we would like to see those areas that are interested in setting up tribal courts either on a village level or on a cluster level or a regional area be able to be recognized with concurrent jurisdiction so that if they are to the point where they are able to actually handle child welfare matters in a very competent manner and a very responsible manner for the native people in that area, that they be allowed to use that as a form of local control.

The CHAIRMAN. Would the so-called draft bill submitted by the Association of American Indian Affairs address and cure the problem you have just cited?

Ms. KITKA. I think it will go a long ways. We are submitting written testimony which would basically address some of the technical things in that proposed bill. It's my understanding that there is a little bit of confusion because of the jurisdictional issue being such a question mark in our State at this time, the fact of whether or not Alaska native villages fall in the fact of being Indian country or not Indian country or what have you, the amendments the way that they are need a little bit of technical work.

What we are not suggesting is jumping completely into the whole tribal governance jurisdiction issue completely, but basically trying to get some tools to villages in order to try to make this act work in Alaska. Like I said, we've got some technical changes that we think can make these amendments work better for Alaska.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Well, I thank you all very much. If you do have written statements that you would like to submit, please do so, and these statements will be made part of the record.

Our second panel consists of the deputy to the assistant secretary of the Bureau of Indian Affairs, Ms. Hazel Elbert; and the associate commissioner of the Division of Children, Department of Health and Human Services, Ms. Betty Stewart.

The committee appreciates your participation in this hearing this morning. May I call upon Ms. Elbert?

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY (TRIBAL SERVICES), BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY LOUISE REYES, CHILD WELFARE SPECIALIST; KAREN ECKERT, CHILD WELFARE SPECIALIST; DAVID ETHERIDGE, SOLICITOR

Ms. ELBERT. Thank you, Mr. Chairman, members of the committee. I am pleased to be here today to report on the progress in the implementation of the Indian Child Welfare Act of 1978. The Indian Child Welfare Act of 1978 recognizes that the tribe has the primary authority in matters affecting the welfare of the Indian children and their families residing on their reservations.

The act is not limited to reservation-based tribes, however. It extends to tribes in Oklahoma occupying lands within former reservation areas and to Alaska Natives. The act recognizes the traditional role of State agencies and courts where an Indian child or his family does not reside on a reservation, and has specific provisions for transfers of cases from State to tribal courts.

In cases where a State retains jurisdiction, the act authorizes tribes to intervene in the proceedings and participate in the litigation. It imposes certain evidentiary burdens in State court proceedings and establishes placement preferences to guide State placements.

Title I of the act focuses on legal issues, including individual custody proceedings, legal representation in custody matters, and reassumption of jurisdiction.

We are aware that these procedures have been the basis for litigation in recent years, although we are not parties in those cases. You may be aware of the highly publicized case of the Navajo boy who was adopted by a non-Indian family in 1980. The birth-mother later filed suit on the basis that proper procedures were not followed, and the Utah Supreme Court agreed. In 1986 the case was returned to the jurisdiction of the Navajo court to decide the best placement for the child. We are pleased that a settlement has been reached between the parties that appears to be a reasonable arrangement for all concerned.

Although the Navajo case has been the most publicized, it has not been the only case taken to court under Title I of the act. Although the procedures under Title I we believe are clear, it may be many years before all States and tribes are aware and fully understand them.

The primary reason Indian children are separated from their families and enter into foster care systems is because of child abuse or neglect. For the month of August 1987, 15 percent of the total complaints of possible child abuse and neglect involved physical abuse, 69 percent involved neglect, 12 percent involved sexual abuse, and 62 percent involved alcohol or substance abuse.

Although we do not have statistical data to identify the number of Indian child custody proceedings handled nationwide on an annual basis, the information available which most closely reflects this number would be the total number of Indian children in foster or out-of-home care. As of June 30, 1986, that number was 9,123. We currently have an interagency agreement with the Department of Health and Human Services to complete a study on children in out-of-home placements. The draft findings of that study indicate that 52 percent of the children were under State care and 48 percent were under tribal Indian organization or BIA care.

The BIA and IHS have cooperatively developed child protection teams and procedures and reporting requirements. They have been developed to ensure that reports of suspected child abuse and neglect are handled in a timely manner and to assess any immediate threat to a child's safety. The teams will include social service agencies in communities and provide them an opportunity to share information and resources and plan for children and families involved in child abuse and neglect situations.

We have also entered into an interagency agreement with the Department of Health and Human Services to fund model sexual abuse treatment and prevention programs on the Hopi and Fort Peck Indian Reservations.

Title II of the act authorizes the Secretary of the Interior to make grants to Indian tribes and tribal organizations to establish and operate Indian child and family service programs. In fiscal year 1987, 128 grants were funded with a total appropriation of $8.8 million. Currently, 48 percent of the grants are multiyear grants and the remainder are single-year. Multiyear grants were initiated in 1986 and the current multiyear cycle will operate through the 1988 funding cycle. The multiyear grants were developed out of recommendations originating from the 1984 oversight hearing. This procedure has been successful, so we are currently considering accepting only multiyear applications when the multiyear cycle begins in fiscal year 1989.

Title III of the act requires State courts to provide the Secretary of the Interior with a copy of any decree or order in an adoptive placement of an Indian child and authorizes the release of such information to the child at the age of 18, in order to be enrolled in his or her tribe. Attached to my written statement is the list that identifies the total number of adoptions by State.

However, States have not been diligent in their reporting, and recent contacts with individual States indicate this may be a serious undercount. Our area offices have been directed to contact all States in their jurisdiction to obtain more accurate information.

Title IV of the act required a report to Congress on the feasibility of providing Indian children with schools located near their homes. This report has been completed.

The information we have provided today is very limited and highlights only some of the concerns in addressing Indian children and families. We believe that the Indian Child Welfare Act has made a difference in meeting the needs of Indian children in need of foster and out-of-home placements. We are aware that the committee staff has circulated to the tribes draft bills to amend the act. We did not receive these bills until just last week and, therefore, have not had time to review them. We would be most pleased to provide our comments at a later date.

Mr. Chairman, this concludes my prepared statement, and I would be happy to answer any questions the committee might have.

[Prepared statement of Ms. Elbert appears in the appendix.]

The CHAIRMAN. Thank you very much.

As the title of the act indicates, the Indian Child Welfare Act, we are concerned with the welfare of the native Indian child. From that vantage point, all of the witnesses who appeared before you expressed concern over the large number of native children being placed in non-native foster homes or adopted by non-native families.

From the standpoint of the welfare of the child, can you tell us if it is in the interest of the child to be placed or not placed in non-native homes? What is desirable?

Ms. ELBERT. That is a very difficult question to answer. When you consider that, as some of the witnesses testified here this morning, that you have an alcohol and substance abuse program in a lot of the homes that reaches 89 percent, and yet you have children that are being abused and neglected and the whole objective is to keep the family together, that is ideal if you can do that. But I think you have to weigh each case on a case-by-case basis to make sure that you are not subjecting the child, trying to keep him with the family, to a worse situation than if you put him in a non-Indian setting.

I think it's important that the child retain as much of his culture as he possibly can if that is feasible to do without subjecting the child to so many things to deal with that complicates his life. My feeling is that if a non-Indian setting is going to provide that child love and care, an education and is going to make sure he is well taken care of, that is just as good a setting as if the child were kept in the Indian setting, if he is going to be subjected to all of these other things that complicates his life as well.

The CHAIRMAN. In the case of Alaska, the testimony is that only four percent of the urban native children is placed in tribal homes and the rest are placed in non-native homes. Is the situation so bad in Alaska that only four percent of the children could find homes in the native environment?

Ms. ELBERT. Mr. Chairman, since we don't really have a lot of involvement in the placement of these children, I don't know what all is taken into consideration in making those placements. We are really not involved in the placement part of this act except if the courts are not able to locate the child's parents or to identify from which tribe that child is descended. It is only then that the bureau gets involved in placement situations.

The CHAIRMAN. Would you be in favor of establishing tribal courts in the Alaskan Native villages?

Ms. Elbert. Mr. Chairman, that is a much bigger question than I am prepared to answer here. I think you could have a whole hearing on that question.

The Chairman. Who can answer that?

Ms. Elbert. I don't believe there is anyone here with me today who can.

The Chairman. Well, will you have the Assistant Secretary provide an answer to that?

Ms. Elbert. I will mention to the Assistant Secretary that the committee would like to have a response to that question.

The Chairman. Have you received a copy of the so-called draft bill that these people have been testifying on?

Ms. Elbert. I believe our legislative office has. I have not seen the bill.

The Chairman. Has your legislative office made any recommendations on that measure for or against?

Ms. Elbert. I don't believe so.

The Chairman. Will you ask them to submit a statement indicating their support or nonsupport of the measure?

Ms. Elbert. Surely. As I indicate in my statement, we would be glad to make comments on the bill.

[Information to be supplied appears in the appendix.]

The Chairman. All witnesses have indicated a lack of funding. Can you tell us something about funding?

Ms. Elbert. Funding for 1987 we received an appropriation of $8.8 million for title II of the act. And we funded 128 grants, I believe, with an average grant of about $69,000. We try as best we can to make sure that the proposals are equitably funded, and they are funded, we think, on a need, merit, and performance type basis.

I do believe that some of the comments that some of the witnesses made about who gets funded and who doesn't get funded has some basis. It depends on how good a proposal writer you are as to whether or not your proposal receives funding. If you are a good proposal writer—and there are a lot of good proposal writers out there—quite naturally your proposal is going to look a lot better than one that isn't put together quite so well.

The Chairman. So you are telling me that the merits of the case are secondary; that it depends upon how well someone has command over the Queen's language?

Ms. Elbert. I think that's true not only in this situation but any situation where you have moneys that are awarded on a proposal type basis. It depends on how good the proposal writer is.

The Chairman. Do you provide a program to assist tribal offices to write these applications?

Ms. Elbert. We provide technical assistance to any tribe that requests our assistance in putting together a proposal.

The Chairman. Why don't you help them write those application forms?

Ms. Elbert. We do provide technical assistance if they ask us.

The Chairman. Do you believe that the amount that was appropriated, that $8-plus million was sufficient?

Ms. Elbert. The $8.8 million allowed us to fund all of the applicants that received a favorable score. However, we did fund them at a reduced level. If we had had more dollars, we would have funded them at a higher level than we did. I don't believe there were any that applied and made the score that did not get some funding.

The CHAIRMAN. There is a difference between some funding and appropriate funding. Is the amount sufficient to carry out the intent of the program: to serve the welfare of the Indian child?

Ms. ELBERT. Having to fund at a reduced level, it obviously is not enough.

The CHAIRMAN. What would have been sufficient?

Ms. ELBERT. I believe the number of requests and the amounts involved that we have gotten have over recent years averaged around $13-14 million.

The CHAIRMAN. Before proceeding, would you identify your assistants there?

Ms. ELBERT. Yes; this is Louise Reyes, who is a child welfare specialist in the Social Services Division of the Bureau of Indian Affairs; and Karen Eckert, who is also a child welfare specialist.

The CHAIRMAN. Then from your testimony, you have been able to provide 60 percent of the requested funds?

Ms. ELBERT. Of the $8.8 million? Yes, sir, that's what we were appropriated.

The CHAIRMAN. But it's 60 percent of that which was needed; is that correct?

Ms. ELBERT. Is 60 percent of the $8.8 million?

The CHAIRMAN. You said that the full amount would have been $14 million.

Ms. ELBERT. I said based on the number of applications that we have received and the dollar amounts involved, it amounts to about $13-14 million—I stand corrected. The requests, the total amount of the requests that we receive each year have averaged about $14 million since the inception of the program.

The CHAIRMAN. Of the $8.8 million, what amount was utilized for grants?

Ms. ELBERT. All of it.

The CHAIRMAN. All of it?

Ms. ELBERT. Yes, sir.

The CHAIRMAN. No administrative costs?

Ms. ELBERT. We do not take administrative costs out of the $8.8 million. It all goes to grants, except for this year we did do some mandatory child protection team training.

The CHAIRMAN. How much is that?

Ms. ELBERT. About $20,000—about $200,000.

The CHAIRMAN. Do you on a regular basis monitor this program?

Ms. ELBERT. The child welfare program, yes, we send our social workers—Karen, Louise, and others that we have on the staff—who go out periodically to monitor the grants.

The CHAIRMAN. To all of the areas?

Ms. ELBERT. We try to get to them—we did not, I don't believe, make all of them last year because we did not have adequate staff to do so.

The CHAIRMAN. May I ask how many reservations were monitored last year?

Ms. ELBERT. Eight grantees in Sacramento, two in Juneau, and two special ones—eight in Sacramento, three in Juneau and sporadic reservations throughout the rest of the country. But I don't know in total how many. We would have to gather that information and provide it for you.

The **CHAIRMAN**. How many grantees did we have?

Ms. **ELBERT**. There are 128.

The **CHAIRMAN**. Out of 128 you were able to monitor eight in Sacramento, three in Alaska, and sporadic throughout the country—I don't know what sporadic means.

Ms. **ELBERT**. We estimate about 10 percent of the grantees.

The **CHAIRMAN**. You were able to monitor 10 percent of the grantees?

Ms. **ELBERT**. That is what our estimate is, that we monitored about 10 percent of the grantees.

The **CHAIRMAN**. Are you satisfied that the remaining 90 are being implemented in a proper fashion?

Ms. **ELBERT**. I can't say that I am, no, sir.

The **CHAIRMAN**. Thank you.

Senator McCain.

Senator **McCAIN**. Thank you, Mr. Chairman.

Ms. Elbert, I am somewhat surprised to see that the degree of noncompliance by the States, where according to Title III of the act they are required to provide the Secretary of the Interior with a copy of the Indian decree or order in an adoptive placement of an Indian child. And I noticed the list that you provided shows very little reporting, especially in my own home State of Arizona, which in 1979 had 13 and then there has been none or a maximum of three ever since.

How do you account for that?

Ms. **ELBERT**. You mean for the fact that the States don't report?

Senator **McCAIN**. Yes.

Ms. **ELBERT**. I suppose the State systems have a lot to do with it. There are a lot of things that fall between the gaps in any situation, and I imagine that when it comes to notifying the BIA that we have an adoption situation going on, it's something that just doesn't occur to them to do.

We try as best we can to keep those people informed who are involved in adoptions to the requirement that the BIA be notified in these situations. We have a newsletter that we put out every month that goes to all of the tribes, State organizations, the State court systems and what have you. And I would presume it's just an oversight on their part.

Senator **McCAIN**. Do you have any ideas as to how we can get their attention?

Ms. **ELBERT**. Well, we are continuing to address it in our newsletter, *Linkages*, that goes out every month, and we have had discussions about developing an awareness program so that we can make those who are involved in Indian child welfare a little more aware about the requirements of the law and what is incumbent upon them to do.

Senator **McCAIN**. Well, let me suggest that we might get the attention of the States by threatening to withhold their funding in some way. I think it's very hard for us to get a handle on this situation if we don't know what's going on in these cases. Perhaps you can provide us with some recommendation, because although I appreciate your newsletter, I think it's pretty obvious that there has been no improvement. In fact, looking at these numbers as I see them, there has been an actual decline in some States in reporting.

Ms. **ELBERT**. That is probably an issue that we can address in reviewing the legislation that I understand has been drafted.

Senator **MCCAIN**. Good. Can you estimate how often cases which are similar to the Holloway Carter are filed?

Ms. **ELBERT**. How often such cases are filed? We would have no way of knowing, since there is no requirement to notify us when a case is filed.

Senator **MCCAIN**. Does the BIA play any role in assisting this particular child in this situation?

Ms. **ELBERT**. No; we answered quite a bit of correspondence on it.

Senator **MCCAIN**. Has the department ever requested intervention by the Justice Department in a Child Welfare Act case?

Ms. **ELBERT**. I believe we have requested intervention in a case prior to the act and one since the act, and we have had some involvement in a third situation.

Senator **MCCAIN**. Has the BIA offered an opportunity for tribes to be involved in the development of child protective procedures?

Ms. **ELBERT**. I presume you are talking about the child protection team effort that we have ongoing. We developed the procedures in coordination with the Indian Health Service, and we have had oversight hearings on them once. We are in the process now of having follow-up meetings that would involve the tribes.

The tribes do have an opportunity to become involved in the child protection effort at the local level. They can actually be a member of the child protection team, if I am not mistaken.

Senator **MCCAIN**. Staff tells me that when you requested the Justice Department intervention, that the Justice Department refused to intervene. Is that true?

Ms. **ELBERT**. That's correct.

Senator **MCCAIN**. What were their stated reasons for doing so?

Ms. **ELBERT**. I am not sure of that. I would have to check with legal counsel.

This is Dave Etheridge.

Senator **MCCAIN**. Would you state who you are, sir?

Mr. **ETHERIDGE**. David Etheridge, solicitor's office.

Senator **MCCAIN**. Thank you. Could you provide us with that information?

Mr. **ETHERIDGE**. They sent us a letter, which I think has been fairly public. They didn't feel that there was a substantial Federal interest involved in that particular case that would justify Federal participation in it.

Senator **MCCAIN**. Would you provide that letter that you received so that it can be made part of the record, please?

Mr. **ETHERIDGE**. Yes, I will.

[Information to be supplied appears in the appendix.]

Senator **MCCAIN**. This appears to me, Mr. Chairman, that our Justice Department has a trust responsibility in that area, clearly.

I have no more questions, Mr. Chairman. Thank you.

The **CHAIRMAN**. Thank you very much.

Ms. Stewart.

STATEMENT OF BETTY STEWART, ASSOCIATE COMMISSIONER, DIVISION OF CHILDREN, YOUTH AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC, ACCOMPANIED BY PHYLLIS NOPHLIN, PROGRAM ANALYST

Ms. Stewart. Thank you. Mr. Chairman, Senator McCain, I am very pleased to have this opportunity to appear here today to discuss the implementation of the Indian Child Welfare Act and how the Department of Health and Human Services has coordinated activities with the Bureau of Indian Affairs to assist in achieving the goals of the act.

I am here representing the Children's Bureau, which is located in the Administration for Children, Youth, and Families in the Office of Human Development Services [OHDS], the Department of Health and Human Services.

The Children's Bureau administers the child welfare services program under title IV-B of the Social Security Act and has a longstanding interest in child welfare services for Indian children and their families. The Indian Child Welfare Act of 1978 is the expression of this Nation's policy to protect the best interest of Indian children and to promote the stability and security of Indian families. It established standards governing the removal of Indian children from their families, encouraged the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture and held that no adoption of Indian children would be legal unless a tribal court concurs.

We fully support the law's emphasis on tribal jurisdiction over Indian child welfare matters and efforts to preserve the child's cultural heritage. Our support for the act and its goals has been demonstrated in a number of ways. Most notably, we have facilitated agreements between States and Indian tribes and have undertaken several joint projects with the Bureau of Indian Affairs. In addition, we have used OHDS discretionary grant funds to provide seed money and training for Indians working in the child welfare field.

These contributions, in turn, are perhaps best seen in the context of the larger role that the Children's Bureau plays in providing child welfare services to all children in need of them. Many of the principles of the Indian Child Welfare Act are similar to the requirements of the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. This landmark legislation established a new foster care and adoption assistance program under title IV-E of the Social Security Act and modified the title IV-B child welfare services program to improve protections and services for children.

The goals of Public Law 96-272 and the goals of the Department in administering this legislation are as follows: first, prevention of unnecessary separation of children from their parents; second, improved quality of care and services to children and their families; and, third, permanent homes for children through reunification with their parents or through adoption.

Our philosophy, simply stated, is that, if possible, all children should stay with their parents. If they are in foster care, they should be reunited with their parents, and if they cannot stay with or be reunited with their parents, they should be adopted.

Therefore, in recent years we have put major emphasis on the provision of family-based services to prevent foster care, prompt reunification of children who are in foster care, and the adoption of children with special needs.

Under Public Law 96–272, the Secretary of Health and Human Services makes grants to States for child welfare services and may provide direct funding for child welfare services to Indian tribes. Tribal grants were first awarded in 1983. In 1987, 35 tribal organizations received grants totaling $432,679 under section 428 of the Social Security Act.

To be eligible for funding, a federally recognized tribe must be delivering child welfare services under an Indian self-determination contract with the BIA and must develop a child welfare services plan through joint planning with ODS Children's Bureau staff. Joint planning, which is required by the law, means tribal and Federal review and analysis of the tribe's current child welfare services program, analysis of the service needs of children and their families, identification of unmet service needs to be addressed in a plan for program improvement, and development of goals and objectives to achieve those improvements.

Our regional office staff have met on an annual basis with Indian tribes to carry out joint planning. We believe that the planning effort is a worthwhile undertaking because it gives the tribes the leadership role in assessing their needs and in developing suitable resources. With the tribe's concurrence, joint planning also offers the opportunity to include both the State and the BIA in the planning process and provides an opportunity for the development of cooperative agreements concerning the provision of these services.

The provision of services to Indian children and families, particularly children and families on reservations, varies depending upon relationships between the tribes and the States. In some States there are good relationships between States and tribes. In other States, however, tribal-State relations tend to be problematic.

The problem of divided or uncertain legal jurisdiction and responsibility for intervention and provision of service has long been recognized. One solution proposed has been the development of tribal-State agreements on Indian child welfare issues, spelling out State and tribal responsibility for action and funding. Past agreements were supported by both ACYF and the Administration for Native Americans, but tended to be narrow in scope. For example, an agreement that the State would contract with the tribe to develop and maintain native American foster homes on the reservation: A State could have a different agreement with each of the tribes in the State.

Recently, however, the American Association of Indian Affairs has worked with the State of Washington and an association of Washington tribes to develop a comprehensive agreement covering all aspects of Indian child welfare and defining responsibilities and procedures in all circumstances.

This agreement, signed by the State and almost all of the 26 Washington tribes, will be the focus of a meeting that we will sponsor this winter with representatives from the American Association of Indian Affairs, the State of Washington Indian desk, and the tribal association to present information on the development and implementation of this agreement. At this meeting we will bring together the Administration for Native Americans, the Administration for Children, Youth, and Families, the Bureau of Indian Affairs, congressional staff, native American organizations, and other national organizations.

It is our hope that this agreement will serve as a model for other States and tribal associations around the country.

In a number of other Indian child welfare areas we and the Bureau of Indian Affairs have engaged in collaborative efforts to improve services to Indian children. For example, in September 1985 ACYF and the BIA jointly contracted for a study of the prevalence of Indian children in substitute care. The study also examined the implementation of the Indian Child Welfare Act and relevant portions of Public Law 96-272 as they affect Indian children and their families. This provides a systematic national examination of the effects of the Indian Child Welfare Act.

The purpose of the study was to determine the number of Indian children in substitute or foster care across the country and to obtain data about their placements and case goals. The study was also designed to learn how States, tribes, and BIA agencies are working together in an effort to comply with the legislation and to determine what successes and problems are affecting its implementation.

Data collection for the study was recently completed. An extremely high return rate for the survey was achieved from States, tribes, and BIA agencies. Preliminary findings indicate that approximately 9,123 Indian children were in substitute care in 1986. The final study is expected to be available in January 1988.

Other examples of collaborative efforts between ACYF and BIA include BIA participation in two ACYF advisory boards which are appointed by the Secretary of HHS, the National Advisory Board on Child Abuse and Neglect, and the Advisory Committee on Foster Care and Adoption Information.

BIA staff has been detailed to OHDS to work on Indian child welfare issues. For several years, BIA staff have served on OHDS grant review panels, and OHDS staff have served on BIA grant review panels in the area of Indian child welfare.

The Children's Bureau participated as a member of a BIA task force on child abuse and neglect, which advised BIA in its development and implementation of local child protection teams.

One recent outcome of this interagency collaboration has been a formal interagency agreement under which HHS transferred $200,000 of fiscal year 1987 child abuse prevention funds to the BIA to be used on two reservations, including Fort Peck, with special problems of child sexual abuse.

From 1985 to 1987 OHDS has funded approximately 66 discretionary grants totaling over $4 million to address a wide variety of Indian child welfare issues. Some projects were focused on developing cooperation between States and Indian tribes. Others were focused on prevention of out-of-home placements and improving child protective services on Indian reservations.

Grants provide training for Indian students interested in working in child welfare services and for Indian practitioners already working in this area. Still other projects were designed to help resolve problems of chemical dependency, school dropouts, and runaways.

These OHDS discretionary grants, it must be emphasized, are for developmental purposes only. Grants made by the BIA under the Indian Child Welfare Act are designed to fund direct service delivery. The discretionary grants made by OHDS complement BIA efforts by providing seed money for future service improvements.

In closing, the Department actively supports the Indian Child Welfare Act and the principles it embodies regarding the prevention of family separation, the promotion of family reunification, and the central role of Indian tribes in deciding these issues. Although we have not yet completed our analysis of the draft bill proposed by the Association of American Indian Affairs, we appreciate the opportunity to comment on draft legislation affecting the Department of Health and Human Services.

Mr. Chairman, that concludes my prepared remarks. I would be happy to respond to any questions.

[Prepared statement of Ms. Stewart appears in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Stewart.

Your statement is a very fine one. I very much agree with your second paragraph, in which you say, "The Indian Child Welfare Act of 1978 is the expression of this Nation's policy to protect the best interests of Indian children and to promote the stability and security of Indian families."

The purpose of this hearing is to determine whether the Nation's policy has been appropriately implemented.

You follow this by indicating, "We fully support the law's emphasis on tribal jurisdiction over Indian child welfare matters and these efforts to preserve the child's cultural heritage."

Are you disturbed or concerned with the statistics that we just received from Alaska that 96 percent of Native Indians in urban areas find themselves in non-Native homes?

Ms. STEWART. Yes; I think that everyone here would have to have some concerns about such an extremely large percentage.

I can say, in general, we have had some difficulty in obtaining accurate statistics.

We are hopeful that the study we funded jointly with the BIA will give us some additional information that will help to inform us more specifically about the numbers of Indian children in adoption and foster care throughout the country, including Alaska.

We feel that the information that we will gain from this study will be very helpful to us and others in addressing this problem.

The CHAIRMAN. Are you also concerned with the statistic that 49 percent of native children on reservations are being placed in nonnative homes?

Ms. STEWART. I think, sir, that I would have to know more about some of the specifics of why this is happening. It seemed to me in the earlier testimony that while there was concern that children were not being placed with Indian families, there was also a feeling that children who were placed with non-Indian families on reservations still had opportunities to maintain and retain their cultural heritage.

The **Chairman**. You have said the following: "Most notably, we have facilitated agreements between States and Indian tribes."

How many agreements have you facilitated?

Ms. **Stewart**. I am sorry I don't have that exact number, but I would be glad to provide it for you.

The **Chairman**. Well, how many agreements do we have between States and tribes? I gather that there are just about two of them; is that correct?

Ms. **Stewart**. Two?

The **Chairman**. Yes; one with the State of Montana and the other with the State of Washington.

Ms. **Stewart**. I am sorry, could I just have a moment?

[Pause.]

The **Chairman**. I am talking about the title IV money.

Ms. **Stewart**. Mr. Chairman, we know that a number of agreements have been negotiated between States and tribes. Some have been negotiated in the past and have not been continued. Some are in place currently. I cannot give you an exact number now, but we will be very glad to provide that information to you. But certainly there are many more than two.

The **Chairman**. Without these agreements, the funds, title IV funds, go from your office to the State and it is the State's discretion whether they pass it on to the foster homes. Is that correct?

Ms. **Stewart**. I am sorry, sir, are you speaking of title IV–E funds?

The **Chairman**. Yes.

Ms. **Stewart**. Yes; you are correct, the title IV–E funds go directly to the States, and it is the State's decision to determine who administers those funds. And you are also correct that State and tribal agreements make it possible for tribes to assume responsibility for Indian children in foster care. With such agreements, tribal organizations are more likely to feel that there is an equitable distribution of title IV–E money, which is, as you know, related to those children who are in the foster care system who are AFDC-eligible. That includes Indian children as well as non-Indian children.

The **Chairman**. In other words, if the States refuse to recognize the jurisdiction of the tribal courts, the moneys are not passed through?

Ms. **Stewart**. It is my presumption that it is the State's responsibility to make those determinations, yes, sir.

The **Chairman**. Would you think it would be a better arrangement, as suggested by the Association of American Indian Affairs that these grants be paid directly to the tribes?

Ms. **Stewart**. We received this proposal only late last week and have not had a chance to review it. We have, however, had a legislative proposal suggesting that social services block grants provide money that would go directly to the tribes. So we would be supportive of that.

The **Chairman**. Can you provide us with your review and your recommendations on this draft bill?

Ms. **Stewart**. Yes; I will make your wishes known to our legislative staff, yes, sir.

[Information to be supplied follows:]

In response to the Committee's request for the number of agreements the OHDS has facilitated between States and Tribes, we have the following information concerning State-Tribal IV-E agreements. Although there are many issues around which States and Tribes may wish to enter into cooperative agreements, information was sought only on title IV-E agreements which allow Tribes to assume responsibility for the foster care placement of Indian children while the State provides the foster care maintenance payment with Federal participation. Following is a State-Tribal listing of current IV-E agreements and agreements under negotiation. Regional office staff indicate they have facilitated all the listed agreements with Tribes except the Sisseton/Wahpeton, and Cherokee in North Carolina agreements.

State	Tribes with Current IV-E Agreements	Tribes with Pending IV-E Agreements
Arizona	o Gila River	o Navajo
Florida	o Seminole	
Minnesota	o Six Bands of the Chippewa Nation White Earth Boise Fort Leach Lake Fond du Lac Grand Portage Mille Lacs	
New Mexico	o Zuni o Navajo o Laguna o San Felipe o Ramah Navajo	o Jicarilla o Acoma o Santo Domingo
North Carolina	o Cherokee	
North Dakota	o Devil's Lake Sioux o Sisseton/Wahpeton o Three Affiliated o Standing Rock	

State	Tribes with Current IV-E Agreements	Tribes with Pending IV-E Agreements
Oklahoma	o Comanche o Cheyenne/Arapaho o Ponca o Pawnee o Tonkawa o Otoe-Missoula o Ft. Sill Apache o Absentee Shawnee o Apache o Choctaw	o Kickapoo o Seneca Cojuga o Caddo o Wichita o Delaware o Cherokee
South Dakota	o Sisseton/Wahpeton	
Washington		o Joint agreement with 26 Tribes in State

The proposal by the American Indian Affairs Association is under review by the Department. When we have completed our review, we will provide the committee with our recommendations.

The CHAIRMAN. You have indicated that, "The provision of services to Indian children and families, particularly children and families on reservations, varies depending upon relationships between tribes and the State. In some States there are excellent working relations, with joint planning and Indian tribal involvement in funding decisions. In other States, however, tribal-State relations tend to be problematic. The problem of divided or uncertain legal jurisdiction and responsibility for intervention and provision of services has long been recognized."

Could you give us an assessment of these excellent working relations and what States are involved, and the problematic relations and the States?

Ms. STEWART. Are you asking me for a listing of the States that have good relationships and those that don't?

The CHAIRMAN. Yes.

Ms. STEWART. I am not really prepared to give that information, no, sir.

The CHAIRMAN. But you testified to that.

Ms. STEWART. Yes, sir; but I was not prepared to give you an actual list of those States that we think work well.

The CHAIRMAN. Did you have a list?

Ms. STEWART. I don't know that we actually had a written list.

The CHAIRMAN. If you don't have a list, how can you tell us that some are excellent and some are problematic?

Ms. STEWART. Members of our staff and staff in our regional offices who work with various States and tribes provide us with this information. But I am just not prepared to talk about individual States.

The CHAIRMAN. Will you provide us with a list?

Ms. STEWART. I will make every effort to do so, yes, sir.

[Information to be supplied follows:]

In response to the Committee's request for a list of Tribe-State relations both excellent and problematic, we provide a brief assessment from four regions with significant Indian populations.

Region VI New Mexico has experienced both good and problematic relations with various Tribes. The quality of the relations seem to change frequently as both State and Tribal administrations change frequently.

Oklahoma has gone from bad relations with Tribes three or four years ago to what is described as an excellent relationship today. Over the last two or three years more and more of the Tribes in this State describe the State's openess and willingness to work with them.

Region VII There are no title IV-E agreements with Tribes but there is a negotiated agreement between the State of Kansas and the Four Tribes of Kansas Consortium to provide services, including foster care. (The agreement is a purchase of service contract not a title IV-E agreement.) The regional office was involved in agreement facilitation and describe the State-Tribal relationship as excellent.

Region VIII Many States in this region have been wrestling with various problems regarding services to Indian children on reservations. In the face of diminishing resources, discussions have developed between the State agencies and the BIA area offices regarding which agency will provide child welfare services to Indian children.

Region X Alaska will soon have agreements with Tribes in place. Biggest problem here is that Tribes have 13 corporations of over 250 villages and each village wants their own agreement. Regional Office is helping facilitate.

Oregon is working on an agreement with Tribes. Regional Office is helping to facilitate.

Washington has good relationship with Tribes. DSHS has an "Indian Desk" with 4 or 5 employees which deals with Indian Issues. The State is in the process of negotiating a joint agreement with 26 Tribes. The process of negotiating this agreement has forged a new and more productive State-Tribe relationship. As a result of this agreement Tribes will be involved in every aspect of child welfare service delivery to Indian children.

The CHAIRMAN. You have indicated that you consider the arrangement worked out with the State of Washington should serve as a model for other States. Is that the official position of your agency?

Ms. STEWART. In support of this agreement we are sponsoring a meeting so that those who worked out this agreement can present it to others within the Administration that are involved with Indian affairs and to other national organizations. We do feel that it presents a real breakthrough in States and Indian tribes working together on the comprehensive development of services for all Indian tribes. We in the Children's Bureau are very supportive of this agreement and would like to see other States make similar efforts. Yes, sir.

The CHAIRMAN. Thank you very much, Ms. Stewart.

Senator McCain.

Senator McCAIN. Mr. Chairman, I noted that both our witnesses have not had an opportunity to review the legislation, and I wonder when they will be able to review and provide their recommendations to the committee.

First, Ms. Elbert, I guess you might comment?

Ms. ELBERT. In about 3 weeks.

Senator McCAIN. Ms. Stewart.

Ms. STEWART. I don't have a specific timeframe to give you, sir, but as soon as possible.

Senator McCAIN. Well, I guess I should ask next how long before this hearing were you notified that we would have the hearing?

Ms. STEWART. I'm sorry?

Senator McCAIN. How long ago were you notified that you would be asked to appear before this committee?

Ms. STEWART. I think, sir, about 1 week or 1½ weeks ago.

Senator McCAIN. I have no further questions, Mr. Chairman.

The CHAIRMAN. I thank you very much.

Ms. STEWART. Thank you.

The CHAIRMAN. The next panel, we have Ms. Michelle Aguilar, from the Governor's Office of Indian Affairs, the State of Washington; and Myra Munson, commissioner in the Department of Health and Social Services, of Juneau, AK.

Ms. Aguilar and Ms. Munson, I am sorry I can't stay for the hearing. I have to report to another committee, so our distinguished friend from Arizona will be presiding from now on, Senator McCain.

Thank you very much.

Senator McCAIN [presiding]. Thank you, Mr. Chairman.

Ms. Aguilar and Ms. Munson, if you choose to summarize your statements, please feel free to do so, or if you choose to read your entire statement, also feel free to do that. Please proceed.

STATEMENT OF MICHELLE AGUILAR, GOVERNOR'S OFFICE OF INDIAN AFFAIRS, STATE OF WASHINGTON, OLYMPIA, WA

Ms. AGUILAR. Thank you. For the record, my name is Michelle Penoziequah Aguilar. I am the Executive Director of the Governor's Office of Indian Affairs for the State of Washington.

Prior to my current position ~~I served~~ as the Indian child welfare Program Director for the Suquamish Tribe. This is the second Indian child welfare oversight hearing at which I have testified. In order to address the problems that are inherent in the act, and that have allowed Indian children to continue to lose contact with their cultural heritage, and in tribes continuing to lose their children; it has been our position that it is imperative to develop amendments to the act, now.

It is also imperative that Indian children receive appropriate services, and that is directly related to funding. At the hearings in 1984, the witnesses spoke to the need for noncompetitive, consistent Federal funding for ICWA programs.

At one point we were receiving, I believe the figure is, $9 million something; we are now at $8.8 million. In 1984 we asked for somewhere around $28 million; that was asked by the National Association of Native American and Alaska Native Social Workers. The bureau has testified that there are 128 grants currently funded. There are 280 Federally recognized tribes, to my knowledge, in the United States and there are approximately 220 native villages. Less than a third are Iran and funded for I.C.W. programs.

Plus, we also have native American children who are not receiving what I consider culturally relevant services because they belong to treaty tribes that have no Federal recognition at this point. I'm sure that there are also Indian children that belong to State-recognized tribes that would benefit from more appropriate services.

The State, in working with the tribes, have found that inadequate funding is one of the major reason for inconsistent services for Indian children. Coupled with a lack of clarifying amendments to the act, it is a major cause of continuing confusion and litigation.

The State, at the request of tribal social workers, began the process of negotiating a tribal-State agreement, and in the last two-and-a-half-years have arrived at what we feel is probably the most comprehensive Indian child welfare tribal-State agreement in the Nation. It addresses the same areas as the Association on Native American Affairs' proposed amendments.

The Secretary of the Department of Social and Health Services for the State, Jule Sugarman, is quoted as saying that: "This agreement represents a most significant impressive partnership, which I fully support. This agency is committed to the terms, conditions, and obligations contained in the agreement."

The agreement is acting as a blueprint for Statewide policies in the treatment of Indian children. It goes beyond the act in recognizing Indian children. It picks up children that might have fallen through the cracks previously. Most of the tribes in the State are in the process of going through their councils, getting resolutions so that they can officially sign the agreement.

Those tribes that at this point do not have social service programs, or don't feel that they can enter into the agreement officially, will in fact, benefit from the agreement being in place. This agreement basically is the new policy of the State in regards to service provision for Indian children. In effect it states: "This is how, from the day forward, we will treat all Indian children within the State of Washington.

In my written testimony there are several areas, philosophical areas, that the State of Washington has determined is in the best interest of all citizens, and primarily Indian children. I won't read those to you, as you have them in the statement.

One of the outcomes of the negotiation process in the agreement was the development of legislation that provided a means to make payments for Indian licensed foster care. Basically, the bill causes the State to recognize the foster care standards of Tribal foster care licensing agencies. Those standards are, of course, in compliance with Federal regulations and include additional tribal standards.

Payments will come through the State and be made directly to tribally licensed foster families. That will reduce duplication of services by State social workers and tribal social workers.

I think that the State of Washington is doing and has done everything that they possibly can to make it work in Indian country. The State is committed to continuing to work with the tribes in developing programs that will best serve Indian children. The financial assistance is minimal. Our State, like others, is constrained by not having enough money to provide services to children, Indian children as well as other children.

It is our position that amendments will include areas that we found necessary to address in our agreement to make things work in this State; and that it has been very important to develop this agreement so that culturally relevant services can be provided.

The State is ready at any point a bill is brought forth, to make comments, to assist in any way we can. Thank you very much.

[Prepared statement of Ms. Aguilar appears in the appendix.]

Senator McCAIN. Thank you very much, Ms. Aguilar.

I would like to proceed with Commissioner Munson before we have questions.

Please proceed, Commissioner. Thank you for being here today.

STATEMENT OF MYRA MUNSON, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, JUNEAU, AK

Ms. MUNSON. Thank you. I appreciate the opportunity to speak before this committee today. Currently, I am the commissioner of the Department of Health and Social Services for the State of Alaska. The department is a multiservice agency providing child welfare services as well as many other human service programs.

Prior to accepting this appointment in December 1986, I had developed extensive familiarity with the Indian Child Welfare Act providing training concerning the act from 1980 through late 1983 to most of the native associations and many of the village councils throughout the State, as well as to all new social workers, probation officers, and other employees of the Department of Health and Social Services with any direct responsibility for child welfare services.

In the course of doing that, I also provided training for members of the Bureau of Indian Affairs and virtually all groups in the State with interest in the Indian Child Welfare Act. For the three years immediately prior to accepting this appointment, I worked for the State attorney general's office, representing the Department of Health and Social Services in child welfare matters.

I have provided fairly extensive written testimony for the committee and will summarize those comments there.

It is my impression from the contact that I have had throughout our State that in fact there has been considerable improvement in the practice of child welfare as it affects Indian children in our State since the passage of the Indian Child Welfare Act. It is my belief that the act was clearly needed and that many of the purposes of the act are being accomplished, although not to the extent that either the State nor certainly the villages, in our State would like.

I would like to correct some of the impressions left by prior testimony about the statistics in our State. We have in our department probably the least adequate data system that one could devise for a child welfare program. Thus it is no surprise to me that incorrect and misleading statistics are believed to be correct by people within our State. I have heard statistics, similar to those Mr. Ketzler cited, quoted recently at another meeting. I am not sure where they came from, though they are attributed to the State. I am not sure of their timing nor exactly what numbers are used.

Today, I cannot give you absolute numbers, nor can I guarantee you these that I have today are absolutely correct, but I do know at least that they are recent. What I have with me is the result of very careful checking of both our computerized data system and some fairly significant hand tallying, which is required any time we try to gather child welfare data.

In fiscal year 1986, of all protective services offered to all children in our State, 34 percent of the recipients of those services were Alaska Natives; 66 percent of the recipients of child protective services were non-native children. Of all of the native children receiving protective services, 66 percent received those services while the child was living in the home of his or her parents. Of the 34 percent of the children who were in out-of-home placement, 68 percent were in the home of a relative or a foster home.

Our foster home numbers are very difficult to interpret because we do not have reliable data on a case-by-case basis of the race of the foster home or whether the foster home is a relative. We do know that 32 percent of the native children in care were in the home of a relative. Some of those children were in relative foster home placements where the extended family member became licensed as a foster home. It is difficult, if not impossible, for me to tell you how many.

We do know that of all of our foster homes licensed in the State, 26 percent of the foster homes are native families, meaning that at least one of the two parents is Alaska Native.

What I can't tell you today is exactly how many children we are talking aobut. What I can tell you with reasonable certainty is that the number of native children placed in native homes is considerably higher than 4 percent, cited by Mr. Ketzler for urban areas; 8 percent of the children——

Senator McCain. Where do you think that information came from?

Ms. MUNSON. I honestly don't know. There are a variety of documents floating around that include various statistical breakdowns. Depending on how they're interpreted and when they were produced, it may be possible that those numbers came up—I just don't know. They do not match any set of presentations of material that I have. I have asked the Division of Family and Youth Services recently to pull all of the various reports that might include such statistics. Those numbers don't match any sets that we have.

Senator MCCAIN. Will you be sure and provide us with what you do have?

Ms. MUNSON. Yes, I will.

Senator MCCAIN. I think it's very important. Thank you.

Ms. MUNSON. Even in Anchorage, where half the State's population resides and where we have the greatest difficulty achieving the placement preferences of the act, eight percent of the foster homes licensed are native homes; 33 percent of the children placed are native. We know that Anchorage is the area in which we have the greatest trouble in compliance with the act.

By contrast, in some other regions of the State, the vast majority of native children who are taken out of their homes, will be placed in a native home either in the village or with a relative. In some cases where a home cannot be found in the village, the child will be brought into a regional center area. For example a child may be removed out of a village into the NaNa region, and brought into Kotzebue, a community of about 3,000. Still, most of those children will be placed in native homes.

Our most serious placement problems are in the larger centers in our State—Anchorage, Fairbanks, Juneau, Dillingham, and so on—the sort of regional centers where there is a mix of both native and white families.

I know that not only our staff is finding native foster homes a difficulty. I spoke recently with the president of the Kodiak Area Native Association (KANA). He indicated the most challenging task facing their child welfare worker is finding native foster homes. And that is the Native Association trying to do that. It's a very difficult problem, and it hinders all of us in our efforts to find adequate placements.

There are, however, many positive things happening in the State with regard to implementation of the Indian Child Welfare Act. As Ms. Kitka pointed out, the State is involved in negotiations to develop an Indian Child Welfare tribal-State agreement. We are doing that in a somewhat different process than was used in the State of Washington, but it is a process that has been widely, although not universally, endorsed in our State.

State representatives are meeting with representatives of a variety of native organizations and villages to develop a model agreement focusing on procedural aspects of the act. We hope to achieve an agreement about which the State can say, "We will agree to all of these terms," and then to offer that agreement to all of the villages of the State. As was pointed out, we have over 200 villages in the State, each of which has the governmental authority under the act to enter into an agreement with the State.

To assure that the agreements can be actually implemented it is my conviction that the agreement must be as uniform as possible throughout the State with variations being limited to certain areas of the agreement. In practical terms such uniformity will be necessary or our social workers simply will not be able to use them meaningfully, given that many of the children are in urban areas and the social workers may be working with children from potentially any one of those 200 villages at a given time.

In fact the team of drafters elected by the native representatives and by the State are coming together to continue that work this week.

In addition, the Alaska Supreme Court has adopted new children's rules for the first time in 20 years. They significantly changed the rules and have incorporated most of the procedural provisions of the act.

A year ago the State adopted legislation allowing for visitation after adoption in certain cases where the parties agree or the court orders it. This was not directed only at Indian families but it certainly helps in Indian cases even more than in others. While still with the attorney general's office, I used these new provisions in at least one case to protect an ongoing relationship of an Indian child with her biological parents even after the adoption was finalized.

Since 1980 all training offered by the Division of Family and Youth Services in child welfare matters has been offered to representatives of the native associations and village councils with child welfare programs. Recently, there was a training session on adoptions offered by the Division of Family and Youth Services. Representatives of many of the native associations and tribal councils were there. Out of that came an agreement to work on developing a statewide list of adoptive placements for Indian children, which has been a goal of the department for some time despite very limited funding for its adoption programs.

These have been only examples of many things going on throughout the State.

Many people who have testified here have commented on funding. Lack of adequate funding for tribes has probably more seriously hampered the implementation of the act than any other single factor. Lack of adequate funding for State child welfare programs equally hampers the implementation of good practice as it affects Indian children because it hampers our ability to implement good practice for all children.

As I point out in my written testimony, much of what we seek to do in protecting Indian children comes about not only because of the requirements of the Indian Child Welfare Act, but because of changing understanding of good child welfare practice generally. Certainly since I began practicing social work in 1972, the practice has changed dramatically. Our understanding of the needs of children to remain within their own families and within their own racial or cultural group has changed dramatically—unbelievably—since the early 1970's and late 1960's.

When states have inadequate funding for their general child welfare programs, though, we fail to achieve many of our goals to the extent that we would like. I think if we were to inquire into our accomplishments under the Adoption Assistance and Child Welfare Act of 1980, we would see failings similar to those found when we examine compliance with the Indian Child Welfare Act.

I would like to comment specifically on some of the things which I think have hampered the implementation of the act. I mentioned the inadequate child welfare funding for villages by the bureau of Indian Affairs. I think the funding problems extend beyond that, though. In the early 1980's I took part as an ex-officio member of an ad hoc Indian child welfare organization in Alaska, a loosely drawn together group of people who were working for native associations and villages. Initially it was called the Alaska Native Child Welfare Task Force, and later, the Alaska Native Child Advocacy Board.

That group, which met almost monthly for nearly three years, ultimately dissolved because of the competitiveness of the BIA grant process in our State as well as the chaos of the grant process. I think "chaos" is really the only appropriate word to use to describe the quality of technical assistance supplied in our State to the villages and the associations by the Bureau of Indian Affairs.

By the end of the organization's life, virtually every meeting was consumed with people exchanging notes about their latest communication with some member or another of the Bureau of Indian Affairs—either in our State; Washington, DC.; or in Region X—Seattle—trying to find out what the status of the grants was. Ultimately, it simply became a poor use of everyone's money to attend the meetings either by phone or in person, particularly given the cost of travel and telephone communication in our State.

Only in the past two or three months has a Statewide group, of native associations and villages formed again to look at the issues of child welfare. The impetus, I think, was the adoption training I mentioned earlier, as well as the State-tribal negotiations that are going forward.

Senator McCain. Is there any improvement in the information from the BIA?

Ms. Munson. I can't speak about the grant process because I have not had the regular contact since 1983. I think there are other people here who could speak to that more directly.

As to the adequacy of other information, though, I would like to comment on that separately. I took part in many efforts to communicate with the Bureau of Indian Affairs, trying to acquire information about what our State should use to identify villages for notification purposes; in seeking help from the bureau to identify what the tribe for an individual child might be; and in responding to questions from attorneys and social workers around the country who would periodically call me trying to figure out to whom a notice should be sent.

It was not at all uncommon in the early years of the act, for the Bureau of Indian Affairs to send a notice to a regional profitmaking corporation rather than to a village, an obvious lack of understanding of notification. Quite honestly, the BIA staff were far more confused than most of our State social workers.

It is my impression that while notices no longer go routinely to corporations, the situation has not improved dramatically. The Bureau of Indian Affairs is seldom of any great assistance to anyone in determining what the tribe of an Alaska native child might be or to villages in Alaska in developing enrollment.

You need to understand that most of the villages in our State do not have up-to-date enrollments, and that the regional corporation enrollments were for the purposes of corporate membership. For the purposes of the Alaska Native Claims Settlement Act many people enrolled in a regional profitmaking corporation outside of the region from which their family had come from. So the regional corporation enrollment does not reflect the political or Governmental relationship that exists between the Indian people in our State and the villages from whence they come.

Determining what the tribe of a child in our State might be is an overwhelming task for the State and for anyone else. The Bureau has been of virtually no assistance in that process.

In addition, I think, in our State as well as in others, there are instances in Federal law, particularly in the Social Security Act, where for a tribe to receive funding, or for the State to receive funding if the tribe is also receiving it, both the State and tribe must meet the Federal standards set out in that law. The requirement essentially is that each make the other conform to that law. It is not a helpful practice to the States and tribes in trying to reach their own agreements.

To the extent that the Federal Government wishes to impose requirements on tribes or States for the practice of child welfare programs, they should impose them directly on the tribe and on the State and not seek to have either the State or the tribe impose the requirements on the other for either to receive the Federal funds. That is the case under title IV(E); both the State and the tribe must be in compliance or both may suffer sanctions.

While our State is not one with an agreement that provides for pass through funding, having to impose those requirements on tribes is certainly an impediment we will have to get around to develop State-tribal agreements. It is my advice to the committee that you consider amendments that at the very least remove that kind of harness arrangement between States and tribes wherever it occurs.

I would like to respond to a couple of the questions that have been asked of people who testified earlier. One asked about legal representation. Alaska recognizes a very extensive right to court-appointed counsel. Virtually any parent is entitled to legal representation. Almost every child has a right to an appointed guardian ad litem. What is not available, in most instances however, is legal representation for the village. In some cases, the village or an association has used limited resources to buy legal representation for the village.

In the early days of title II funding—and again I can't speak to the present situation—tribes were not allowed to use their funds to acquire legal representation. Nor were villages authorized to use those funds for training.

It is my conviction that had every parent in this country had adequate legal representation by someone knowledgeable about child welfare, we might never have needed an Indian Child Welfare Act or the Adoption Assistance and Child Welfare Act of 1980. Having good legal counsel to represent each party in an adversary child welfare case, would have improved child welfare practice enormously. In fact, if every tribe had had legal representation or did now, the quality of interaction in these cases would be improved.

Finally, it is certainly true that there is much litigation in Alaska about the meaning of certain requirements of the Indian Child Welfare Act. But it is small in relationship to the number of cases arising under the act, most of which are worked out amicably or, at least, without an appeal. In many cases, a village intervenes either formally by appearing in the State court proceeding or informally by offering consultation to the State. Arrangements are made for placement in a relative's home or even to leave the child at home. In cases when permanent separation is required, agreements are reached about the appropriate adoptive placement for a child.

In those instances where conflict over the facets or the law occurs, the case is litigated, and occasionally appealed. There is undeniably significant difference of opinion about how the law should be interpreted over certain aspects of the law in our State. Those differences do not prevent progress from being made in our implementation of the act though.

Thank you.

[Prepared statement of Ms. Munson with statistics for active and non-active CPS cases, appears in the appendix.]

Senator McCAIN. Thank you very much.

I want to thank both of you for very fine testimony. First I would like to say that Senator Evans is still participating in the floor activities regarding another issue that affects the State of Washington, the Washington nuclear waste repositories. I am sure you are aware of that, Ms. Aguilar, and we are hopeful that he is successful in not arranging anything for the State of Arizona. [Laughter.]

Ms. AGUILAR. Right.

Senator McCAIN. I did talk with him before this hearing, and he is very proud of the work that the State of Washington has done, and the work you have done in particular, in taking the lead in this agreement if it is going to help the tribes and the social services agencies adhere to this act. I think you are to be congratulated, and I am going to urge my friends in Arizona to examine very carefully what you have done in hopes that we can arrive at a similar agreement.

Ms. Munson, I would have a lot of questions for you. I think your testimony is excellent. If I understand your position, it is that every village in Alaska has Governmental authority to enforce the ICWA and to enter into agreements with the State. Is that correct?

Ms. MUNSON. That's correct.

Senator McCAIN. I am also interested in your statement concerning the requirement for increased Federal funding, but there is also a requirement for increased State funding. I hope that perhaps we can work out in Alaska and in other States better communications so that there is a better understanding of how those two requirements interrelate. I don't see a lot of coordination in that effort. Do you?

Ms. MUNSON. No.

Senator McCAIN. Well, some of my other colleagues may have some other questions for both of you. I appreciate both of you for coming this long way, and I think you have contributed enormously to what we are trying to achieve here.

I just have one more question for Ms. Aguilar.

What, in your opinion, has been the primary reason for the success realized in the development of this compact on Indian child welfare?

Ms. AGUILAR. I think it was the dedication of the social workers. I would really have to give the Indian social workers credit for just hanging in there and for the tribes that supported us. At that time I was working for the Suquamish tribe. We were operating under very, very limited funding. The tribes allowed us to leave, sometimes our clients or the tribe suffered from our absence to be at the negotiations, to be drafting this. As you can see, it is a very comprehensive agreement.

I also think that we went in with the attitude of let's fix everything, let's do it all and present it to the State, and if we're lucky we'll get 50 percent. During the first year of negotiations, that is basically what happened. The State said, "Well, we really can't do that, and we really can't do that, and we really can't do that."

After 1 year of sitting down with the social workers and beginning to really understand the problems and the complex issues involved with the relationship between States, tribes, and the Federal Government, the State started saying, "Well, why don't we do this," and they started handing everything back to us, only from their point of view. And what we say is that we basically feet that they have had a chance to walk in our moccasins for a while.

I must give credit to one of our AG's who also, after 1 year, said, "I think I'm beginning to get it. I guess I am beginning to think a little bit like an Indian might think." She took the——

Senator MCCAIN. We've been trying that for a long time. [Laughter.]

Ms. AGUILAR. She took the impetus to write some legislation that we really didn't feel was much closer than a couple or three years down the road, and we got it passed immediately.

That happened the same way with the Department of Social and Health Services. There were a few dedicated people there who took the time to understand the problems and say, "Yes, we need to fix it. We need to somehow take the intent of the Federal act and make it reality in this State for Indian children. We value Indian people."

Senator MCCAIN. Well, finally, Ms. Munson, I was sorry to hear that anecdote that you related about the number of meetings that took place and the frustration that you experienced. If you have any ideas as to how we can help in ensuring that you don't face a repetition of those enormous frustrations, we would be glad to consider any ideas you have.

Ms. MUNSON. The truth is I don't know what the source of the problem is within the Bureau of Indian Affairs, and I think you have to look at what the source of that problem is to figure out the solution. I quite honestly don't think it's entirely limited to inadequate funding. I think that is certainly a part of the problem, but that's not all of the problem. I suspect this committee, which has probably far greater experience with the Bureau than I, is in a better position to figure out what the real source of that problem is.

Senator McCain. Well, I certainly would appreciate your comments on the proposed legislation as well.

Ms. Munson. We will offer that. We have received a copy of the proposed legislation and also of some other proposals that have come to this committee. We will provide feedback to the committee.

Senator McCain. Thank you.

Thank you both for being here.

The next panel is Mr. Jack Trope and Mr. Craig Dorsay, if they would please come forward.

STATEMENT OF JACK F. TROPE, STAFF ATTORNEY, ASSOCIATION OF AMERICAN INDIAN AFFAIRS, NEW YORK, NY

Mr. Trope. Thank you, Senator McCain, and members of the committee. My name is Jack Trope. I am staff attorney with the Association on American Indian Affairs in New York. The Association is a national, nonprofit organization that is dedicated to the protection and enhancement of Indian rights. We have been long involved in Indian child welfare, dating back to the late 1960's. Some of the studies by the Association were instrumental in providing the background for the act in 1978, and at the request of Congress we were involved in helping draft that bill back in the 1970's.

Since then we have continued our activity in this area. We have participated in tribal-State negotiations leading to agreements. We have been involved in assisting attorneys involved in litigation. And as several people have mentioned at the hearing, we have also been involved in preparing a draft legislative proposal that some of the witnesses have commented upon in their testimony.

Before I talk about any of the specifics of the proposal, I would like to give you a little background about how we came to develop this proposal. In the course of our work in Indian child welfare, we repeatedly heard comments from people that we work with in the field about different problems that they confronted in their efforts to fully implement the intent of the Indian Child Welfare Act. After hearing such concerns expressed on numerous occasions, we decided that we would systematically try to develop a legislative package to address some of the problems that we were hearing from practitioners in the field.

The comments fell into two broad categories. One is the lack of adequate funding for Indian Child Welfare and Social Services, a problem which you have heard numerous witnesses testifying about both here and at earlier oversight hearings back in 1984.

The second set of problems involves sections of the Act that are less than clear or less than comprehensive in terms of how they should be implemented, giving those States who do not like the act the room to maneuver out of its provisions. Certainly not all States have attempted to evade the Act. There are many States that are constructively trying to implement the act, and I think you have just heard testimony indicating that the State of Washington is a good example of that.

But the Act has enough slack in it that in those States where there isn't that kind of commitment, there is room for the State courts or social services agency to avoid full compliance with the intent of the Act.

After we started to develop our proposals, we talked informally with dozens, if not hundreds, of people—at seminars, conferences and in the course of our work. We reviewed previous hearings before Congress, case law, and developed a draft proposal. That draft proposal was circulated to numerous people in Indian country—not comprehensively; that was not our goal. Rather we were simply trying to survey a reasonable cross-section of opinion to inform the work that we were doing. Finally, we drafted the proposals that are included in our testimony before you and which have been the subject of some of the witnesses' testimony earlier today.

Let me just give you briefly an overview of what goals the proposals are designed to achieve. Before doing that, however, I would note that we have two legislative proposals laid out in our written testimony that are separate but also interrelated—a proposal to amend the Indian Child Welfare Act and one to amend the Social Security Act. Both of them recognize that the best and most culturally sensitive mechanism for protecting Indian children and families is the tribe, a tribe that has adequate authority, adequate input, and adequate resources to provide the services that Indian children and families need.

Now I would like to address the goals of our proposed legislation. First of all, I will discuss the amendments to the Indian Child Welfare Act. Basically, I will try to summarize what we have done in terms of eight goals or categories.

First, the amendments would clarify and expand the coverage of the act. Thus, for instance, there has been some confusion as to when the Act applies when you have an unwed father. We have tried to specify what an unwed father must do to demonstrate paternity. That is one example of a clarifying amendment.

When I talk about expanding coverage of the act, the best example is the provision dealing with Canadian Indian children. Many such children come into this country, are not covered by the act, and as a result, they are suffering from the same sorts of abuses that occurred prior to the Act in regard to American Indian children. We have tried, in our amendments, to bring them under the Act without getting into some of the international jurisdictional problems that that sort of change might cause.

The second goal that we have tried to achieve with our amendments is to increase tribal involvement and control of the process. Thus, for instance, we provide for notice to tribes of all voluntary proceedings. Many children are continuing to be placed in non-Indian households through the voluntary proceeding mechanism because tribes are not necessarily made aware of or notified when these sorts of placements occur. I would note that the degree to which any placement is voluntary is relative. Some placements that are voluntary are not without some preexisting pressure on the part of State agencies who don't want to deal with some of the provisions of the act which pertain to involuntary placements.

Another example of how we are trying through these amendments to increase tribal involvement and control is an amendment clarifying that tribes have exclusive jurisdiction over children domiciled on the reservation.

A third example of an amendment which attempts to increase tribal involvement is the amendment which would require that whenever a State agency is going to be in contact with an Indian child for more than 30 days, the tribal social services agency must be notified so that it can provide input, refer the child for appropriate services, et cetera.

A third goal of the amendments is to try to increase the possibility that families will remain intact. The tribal services requirement that I just mentioned is one example of how we have tried to do that. Another example is an amendment that would include additional safeguards to make sure that voluntary out-of-home placements are in fact voluntary. Also, we would require that expert witnesses have cultural sensitivity to the child's background in involuntary proceeding where the State is trying to remove a child. These proposed changes are examples of amendments which based upon this third principle.

The fourth goal of our proposed amendments is to try to maximize the possibility that those children who are placed out of home are placed with their extended families, other tribal members, or other Indian families whenever possible. The provision in the current bill that allows placement outside of those categories for good cause has been the subject of some abuse on the part of agencies and courts. What we propose is removing that language from the Act and replacing it with specific instances in which such placements would be allowed. In addition, there would be specific requirements that the State must meet before it can look for a non-Indian placement; certain efforts to find an appropriate foster care placement in an Indian household would be required.

A fifth goal of our amendments is fairer and quicker proceedings. As many of you know, these proceedings often drag on year after year after year, which certainly is not in the best interests of the child. We have recommended increased access to Federal courts as one solution and we have asked that expedited proceedings be mandated in certain circumstances.

The sixth goal of the amendments is to try to introduce more compliance monitoring mechanisms into the bill. At present, there really is just not much of a check upon whether or not the Act is being complied with. For example, Title XX audits of State social services programs audit a wide variety of activities by State social services agencies, but they don't monitor compliance with the Indian Child Welfare Act. Including compliance with the ICWA in the audit is one example of how you can introduce into the law mechanisms for monitoring compliance.

In addition, we have recommended that committees be set up by the BIA on an area-by-area basis which could monitor the overall system to make sure that compliance is occurring.

The seventh area that we have tried to address in the proposal is to improve the Title II grant process. You have heard testimony about how problematic that process is. I would just, as an aside, mention that I heard the Bureau state, in its testimony, that they are funding 128 programs and that this is equal to all of the programs that have received a passing grade. But they didn't tell you how they set the passing grade. They didn't explain how the number of so-called qualified programs has been reduced from about 160 or 170 a few years ago to 128. I suspect that those additional 40 or 45 programs have not suddenly become unqualified to provide services; rather they have become unqualified because the Bureau doesn't want to see appropriations increased.

The last goal of the proposed ICWA amendments that I will mention today is to improve the recordkeeping of foster care and adoptive placements and to increase access to such records. I know that Senator McCain questioned the statistics attached to the Bureau's testimony. Quite obviously, States are not reporting placements of Indian children the way they should. That kind of information should be made available to everyone concerned so we can all see what is actually happening out there.

The second part of our proposal deals with funding. There are a number of ways to deal with funding. I know some witnesses have suggested that Title II be made an entitlement program and that the appropriations be significantly increased. That is certainly one way to deal with this problem. If Congress were to appropriate $30 million for that program and make it an entitlement program, that would certainly go a long way toward addressing funding problems.

We have prepared an alternative approach because we weren't so sure that Congress would appropriate $30 million for a program that it has only appropriated $8.84 million in the current year.

This alternative approach provides for set-asides for tribes from some of the block grant programs targeted to States. Thus, we propose direct Federal funding to tribes under title XX. I noticed that HHS testified that it supports that particular amendment, and we are happy to hear that.

Also, we have proposed direct set-asides under title IV(B). You have heard that there is a small amount of funding going to tribes under title IV(B), but the eligibility requirements for funding under IV(B) are currently very restrictive. Only a small number of tribes receive that money at present, and the amount of money involved is minuscule. We are looking for a much larger set-aside without all of the eligibility restrictions that HHS has placed upon the IV(B) tribal program.

The last program for which we have suggested a set-aside in the Alcohol, Mental Health, and Drug Abuse block grant. Our intent in proposing these set-asides is to provide a stable, secure source of funding for tribes that they would be able to count on year after year so that they can set up social services programs that will be consistent and on-going. I don't think that the proposed funding will be totally adequate, but certainly much more adequate than is current funding.

The last part of our second proposal involves title IV(E). There has been some testimony about title IV(E) foster care payments. At present, the way I understand the law, a tribe can receive IV(E) payments only if it has an agreement with the State.

If the State does not sign an agreement with the tribe—if they can't agree on the terms, if the State isn't interested, whatever the reason—then IV(E) payments are not payable to tribes. The failure to execute agreement can arise from a whole number of factors and it is our belief that an agreement should not be a prerequisite for tribes receiving IV(E) funds to fund tribally licensed foster care homes.

I heard the State of Alaska pretty much say the same thing in its testimony, that the State felt that linking the two programs together, tribal and State programs, and requiring that each meet the other's requirements in order for funding to continue, was not a productive way to set up the system.

Often this linkage is one reason why States are reluctant to enter into agreements, because they don't want to lose control over whether or not compliance is occurring. I think the best way to deal with this problem is to provide for direct funding to all tribes who have licensed their own foster homes. That is what we have proposed.

Just one last comment I would like to emphasize. The purpose in developing these proposals was to start a process, to try to encourage appropriate forums address the needs which we have heard over and over again.

We would urge the committee to take our proposal, take other proposals, take the comments to these proposals, and develop a bill that reflects as many of the needs and concerns that you have heard and that we have heard and which most of the people in this room are aware of, get that bill introduced, circulated it to Indian country, let everybody have a shot at it and indicate if they like it or they don't like it and to come up with better suggestions about how to address these problems, and then pass a bill that Indian country can support and that will meet the needs that are out there.

That was really our goal in developing this proposal, and we are glad to see this hearing being held because we feel that it's an important step in the right direction. I thank you for inviting us.

[Prepared statement of Mr. Trope appears in the appendix.]

Senator McCain. Thank you, Mr. Trope. We appreciate your being here, and I can assure you I have looked at your proposal and so has staff. I think they are going to provide a very valuable contribution to this process. I want to tell you we intend to address the issue exactly as you recommend.

Mr. Dorsay, thank you for being here, and please proceed with your statement. If you choose, I can make your complete statement a part of the record.

STATEMENT OF CRAIG DORSAY, DIRECTOR, INDIAN LEGAL SERVICES PROGRAM TASK FORCE ON ICWA, PORTLAND, OR

Mr. Dorsay. Thank you, Senator McCain. I am not going to address my prepared testimony.

Senator McCain. Without objection, both your prepared statement and Mr. Trope's prepared statement will be made part of the record.

Mr. Dorsay. Thank you.

Senator McCain. Please proceed.

Mr. Dorsay. Thank you. As an introduction, I am appearing here on behalf of legal services programs across the country. I serve as the coordinator to assist them on Indian child welfare cases. As you also know, I spent three years on the Navajo reservation handling the Indian Child Welfare Act for the tribe, and I am the attorney who has handled the now, I guess, infamous Halloway Carter case.

Senator McCAIN. It is certainly famous in Arizona.

Mr. DORSAY. Yes; I think the Halloway case serves a useful example because in my opinion the Indian Child Welfare Act worked exactly the way it was supposed to in that case. The unfortunate aspect of it is that it took so long to reach the proper resolution and that the length of time was not in the best interest of the child at issue in that case.

The case points up a couple of things I think the committee needs to address. One, for instance, is the problem in the fact that each State under the Indian Child Welfare Act as it exists now has the opportunity to interpret the act the way it sees fit. So, for instance, in the Halloway case we already had decisions out of the State of Arizona and the State of New Mexico confirming the tribe's exclusive jurisdiction over these types of cases, and yet we were forced to justify that position for over five years in the State of Utah.

The expenditure of resources on the part of the tribe was just enormous. I would have hoped that the Halloway case would have settled that issue, but I am also aware of another new decision out of the Supreme Court of Mississippi holding that where a child is born in a hospital off reservation and the parents sign a consent to adoption, the Indian Child Welfare Act doesn't apply because the child has never been part of an Indian home. So we still have that problem. Until we can get some uniform interpretation, we are in great difficulty.

I think two examples in the Halloway case point out why tribal court jurisdiction was critical. Both of those go to some of the stories in the press that I am not sure were accurate. All the stories indicate that the adoption was granted in 1980, that the mother consented voluntarily. That wasn't quite true. The child was taken from the reservation by an aunt who had converted to the Mormon religion, and that aunt had arranged the placement of the child in a home. She took the child without telling the mother what the purpose for the removal was, and then later convinced the mother that that removal was proper and had her sign a consent.

All of the testimony in the State court was that the mother didn't do anything to revoke her consent, she knew where the adoptive parents lived, she could have hired an attorney. They asked her to perform all the actions that a college-educated non-Indian person would. In tribal court we asked the mother what she did after she gave consent. She went back to the reservation and she had a number of tribal ceremonies performed. She did the hand trembler, which is the Navajo diagnostic ceremony. She went through the beauty way, the corn pollen way, the turning of the basket, and a number of other ceremonies designed to try to get the child back.

The medicine man told her the way for her to get her children back was to pray, and she did that. So from the traditional Navajo perspective, she was doing everything she could to obtain the return of the children. The State court said she had done nothing and had abandoned the children, and therefore terminated her rights.

The same thing happened also in that the mother had allowed a grandparent to take care of the child for a while. The State court terminated her rights, in part, based on the fact that she had abandoned the child by letting the grandparent take care of the child. Under Navajo custom, that is a common concept and by Navajo statute does not constitute abandonment.

The final issue on that I think I want to address is the bonding issue. That gets to the speed of the trials. We stated as soon as I intervened in the case that we didn't want bonding to be used against us. We asked for visitation in late 1982 so that it wouldn't be used against us, and the State judge denied that visitation, saying the case would be completed in a short period of time.

Of course, that bonding was the basis for all the outcry in the press that why are we trying to steal this child away after he has lived in the home for so long.

The Aunt in this case deliberately tried to remove the child. She stated in testimony she did not want that child placed in an Indian home. If the act had been followed correctly, there were many Navajo homes who would have taken that child and the case would never have arisen and this child would never have suffered any of the emotional damage that he did.

I want to address also the funding issues. I enjoyed listening to some of the Bureau testimony on funding. We have a lawsuit presently going on in Federal District Court in Phoenix against the Bureau of Indian Affairs on the title II grant program.

It is a fact, I find it kind of frustrating because I submitted testimony to the committee in 1984 suggesting changes, and I think in reviewing that testimony it remains relevant today, all the changes that we suggested. As the Bureau testified in 1984, they always recommend zero dollars for funding. It's nice that we're up to $8.8 million, but that funding is always imposed on them rather than them asking for it.

They also stated that the proposals total approximately $13 to $14 million. Well, I could say, for instance, from the Navajo perspective, we have asked whether we could submit proposals for more than the limit, which is $300,000 for the Navajo Tribe. That is denied. So the limit of applications is an artificial limit imposed by the bureau on tribes. There has never been an assessment of the need for these types of services in Indian country, and I would submit that the need is critical and much larger than they have asked for at this stage.

Technical assistance, we consider so far has been a joke part of the Bureau. The TA that has been provided is only provided beforehand. In the lawsuit that is going on, we asked for what technical assistance the Bureau had provided, and they provided us with a list of 41 actions. Of those 41 actions, 37 consisted of sending the public notices that had been published in the Federal Register to the tribe. None of them involved a face-to-face meeting with tribal personnel and assisting them in coming up with an adequate proposal.

The minimum score necessary to get funded is 85. In one of the years we had an 84, even though the Bureau admitted the local area office stated that our application showed need for the funding. The central office here in Washington required that the area office disapprove the grant application because it did not show merit and need because it was one point short. I have a hard time believing that there is no need on the Navajo Reservation for these type of services, given the unemployment rate and poverty rate.

We also have a lawsuit going on against the State of New Mexico on title XX funding. I think as Myra Munson pointed out, there is a great difficulty because of this squeezing of funding among States and tribes.

When the State of New Mexico had a consent decree entered against it because it was not providing adequate services to its own non-Indian citizens, it resolved or tried to conform with that consent decree by taking money away from the Navajo Tribe that it was contracting with the tribe under title XX to meet the terms of its own consent decree. So, we have been suing the State of New Mexico to get adequate funding under that.

I agree with Mr. Trope's comments that under IV(E) funding you have to be in State custody at the moment. One of the other questions that Senator Inouye addressed was placements. We would have a lot more Indian homes available if there was funding necessary to identify those homes and to support them. There are not enough available homes. I had a case that I fought for 2½ years, and when we finally won the right to have the child placed back in the family, the family had to refuse because they couldn't afford to take the child in their home and there was no foster funding available for tribe.

I have been involved in over 500 Indian child welfare cases. My experience has been mixed on them. Some States are very good. Other States are bad. I could probably provide a personal list.

Senator McCain. What is your opinion of Arizona?

Mr. Dorsay. Arizona is mixed. I was going to address the subject of State-tribal agreements, for instance. We have an agreement with New Mexico that works very well. The same thing that Washington talked about, we put the social workers together, told them find out what works, and we have an agreement that has reduced litigation by 90 percent. We have tried the same thing with Arizona. It has been 4 years now, and we don't have an agreement. Some courts are good, some are bad. The court decisions out of Arizona have been excellent, but you should probably ask Anslem Roanhorse, who is the director of the division, who will be testifying this afternoon. He would have a better idea.

Oregon, we have trouble having the State recognize tribal courts as competent courts. It has been mixed.

We have submitted some of our own proposals. They are, in essence, a great deal like those provided by the association. I think there are some minor differences, and I agree with Mr. Trope that the committee and Indian country should work out an agreement that works best in these cases to bring this funding around and to bring the jurisdiction around in a way that protects Indian children.

[Prepared statement of Mr. Dorsay appears in the appendix.]

Other material retained in committee files.]

Senator McCain. Were you satisfied with the results of the Halloway case?

Mr. Dorsay. Yes; I think it was the best, given the circumstances of the case. If we had known about the placement when that placement initially occurred, we would not have settled for anything less than placement in an Indian home. At this stage, the mother is very satisfied that she has some contact with her child. That was not a setting, not a result that we were able to get in the State of Utah. The child's culture will be protected; he will be protected against emotional damage from being taken away from his present home. So I think it's the best result, given the facts of the case.

Senator McCain. We have some follow-up questions that we would like to send to you for the record and ask your responses, from other members of the committee.

I appreciate both of you being here. Both of you, I appreciate your dedication on behalf of these problems that affect native Americans. I know it has been very frustrating for you from time to time, but I think there is a lot of people who appreciate what you've been doing and have done.

Thank you very much for appearing today.

Mr. Trope. Thank you.

Mr. Dorsay. Thank you.

Senator McCain. The hearing will recess until 2 p.m., when we will hear from panel number five, the last one on this hearing day.

This committee will stand in recess until 2 p.m.

[Whereupon, at 12:36 p.m., the committee was recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION—2:15 P.M.

Senator DeConcini [presiding]. The Senate Select Committee on Indian Affairs will come to order. This is a hearing on the Indian Child Welfare Act, and we have a panel that we are going to hear: first, from Mr. Roanhorse, director, Division of Social Welfare, Navajo Nation.

Is Mr. Roanhorse here?

Mr. Roanhorse, if you would please summarize your statement, your full statement will be printed in the record.

STATEMENT OF ANSLEM ROANHORSE, DIRECTOR, DIVISION OF SOCIAL WELFARE, NAVAJO NATION, WINDOW ROCK, AZ

Mr. Roanhorse. Thank you, Mr. Chairman. Members of the Senate Select Committee on Indian Affairs, staff, and ladies and gentlemen, my name is Anslem Roanhorse, Jr. I am the executive director of the Navajo Nation Division of Social Welfare. I am honored to present this testimony on behalf of the Navajo Nation regarding the Indian Child Welfare Act.

The Navajo Nation has provided written testimony, and in the time permitted I would like to just highlight the major concerns noted in that written material.

I am the descendant of the Totsohnii Clan, which is also called the Big Water Clan, and born for the Tsi'Naajinii Clan, which is called the Black Streak Wood People Clan. My maternal grandfather was of the Ashiihi Clan, which is referred to as the Salt

People Clan. My paternal grandfather is of the Tachii'nii Clan, which is referred to as Red Running into the Water People Clan. I mention my clan membership because one's identity and blood relations are still very important to the Navajo people.

I have worked with the act as a social worker, administrator, and trainer. I was instrumental in establishing the first ICWA program for the Navajo Nation in 1980. Since 1980 the Navajo Nation's ICWA program has grown to the point where it now receives up to 400 referrals per year from throughout the country. I was also instrumental in developing an intergovernmental agreement between the State of New Mexico and the Navajo Nation, and this agreement helped in clarifying the processes, procedures and policies for handling the Indian child welfare cases. Finally, I conducted several training sessions on the act in at least five States.

As you may know, the Navajo Nation is the largest Indian tribe in the United States. The land covers approximately 25,000 square miles. The Navajo Nation spans into three States; namely, Arizona, New Mexico, and Utah. Additionally, the Navajo Nation spans into three Federal regional offices; namely, the Region VI office headquartered in Dallas, Texas; Region VIII office headquartered in Denver, Colorado; and Region IX office headquartered in San Francisco, California.

Craig Dorsay, an attorney, also submitted a testimony this morning. Mr. Dorsay was formerly employed by the Navajo Nation and currently assists the Navajo Nation with the ICWA cases through a contractual relation. The Navajo Nation supports his testimony.

The Navajo Nation has operated an ICWA program for several years through the Division of Social Welfare. In fiscal year 1985 this program handled 407 referrals, and in fiscal year 1986 there were 334 referrals. The Navajo Nation's program is the collaborative effort of both the Division of Social Welfare providing the general social work services and the Department of Justice providing legal representation to assert the tribe's interest and its children. This program has been designed to meet the obligations and requirements which the ICWA has created for the Indian tribes.

The funding program which was created by the ICWA and implemented by the BIA is the source of several problems which should be addressed. First is the funding limitations which the BIA has created in implementing the ICWA program. This guideline provides a maximum funding level of $300,000 per year for tribes of more than 15,000 members. This limitation simply ignores the reality of the Navajo Nation, where there are approximately 202,000 members, more than 50,000 of whom reside off the Navajo Nation. Moreover, some 50 percent of the tribal membership is 18 years of age or less, the group to be protected by the ICWA.

It is the Navajo Nation's position that these guidelines be changed to recognize the existence of the largest tribal population in the United States. These artificial constraints severely limit the Navajo Nation's ability to respond to the demands for services.

The other aspect of the grant which I must address is the overall manner in which the BIA has operated the program. The BIA has characterized the grant program as competitive discretionary grant program. As such, a grant application must receive a minimum score of 85 out of a possible 100 points to receive funding. Because of this requirement, the Bureau of Indian Affairs did not provide any ICWA funding in fiscal year 1985 and fiscal year 1986. We have appealed the BIA's actions.

We recommend that the process should be one based upon the needs of the tribe or tribal organization. Further, because the ICWA has important mandates concerning the tribe's interest in its children and imposes duties upon the tribes, these grant awards should be treated as entitled funds to Indian tribes and tribal organizations.

I know you hear this all the time from Federal programs. However, I want to point out that the Federal funds that the Indian tribes receive the funds are inadequate to begin with and have gotten more inadequate over time.

While the ICWA case load has increased, the funding at the national level has decreased. The Congress appropriated $9.7 million in fiscal year 1983, $8.4 million in fiscal year 1984, $8.7 million in fiscal year 1985, $8.4 million in fiscal year 1986, and $8.8 million in fiscal year 1987. I would like to point out that the Congress initially appropriated only $6.1 million for fiscal year 1987, but it was only in June 1987 that the Congress approved $2.7 million supplemental funds.

The overall level of the funding under the ICWA program should be increased to at least $15 million to meet the needs of the tribes and tribal organizations.

There are several points I must also emphasize. The first is that the Navajo Nation believes that the provisions of the act concerning exclusive jurisdiction of tribal courts, Title XXV United States Code Section 1911(a) provisions are clear and work well. This section does not require changes. In the area of voluntary or private placement of children for adoption, preadopted or foster care, the section 1915 provision seems clear such placement requires notice to tribes. Unfortunately, some State courts believe the ICWA does not apply to private placements. We need the Congress's help to clarify this point and to develop better enforcement mechanisms.

Finally, the question of whether a Navajo parent or custodian can prevent the transfer of the case to tribal court under section 1911(a) of the act is also a problem. We agree that a non-Navajo can prevent such a transfer, but it is our position that this section was not meant to defeat the tribe's interest in taking the case back to the tribal court on the sole objection of the Navajo parent or custodian. This area should be clarified.

In closing, I would like to thank the committee for entertaining my testimony.

[Prepared statement of Mr. Roanhorse appears in the appendix.]

Senator DeConcini. Thank you, Mr. Roanhorse.

Let me just ask, in your statement here you talk about the problem also relating to the formula that is applicable here, and you make an analysis that a tribe with as few members as 15,000 would receive the same amount as, say, the Navajo Nation.

Are you proposing a different change in the formula that I missed here?

Mr. Roanhorse. Yes; I think there are two things that the Navajo Nation is very much interested in. The first one, of course, is the funding formula. We know that over 50 percent of 202,000 members are those people who are ages between zero to 21. So, in that sense, 15,000 is only about seven and one-half percent of the Navajo Nation's population.

The second area of major concern that the Navajo Nation has is, of course, the funding level. We strongly feel——

Senator DECONCINI. It is not only the formula, it's that the funding level is too low?

Mr. ROANHORSE. Yes.

Senator DECONCINI. If you changed the formula without increasing the funding level, you're going to make it worse, actually; right?

Mr. ROANHORSE. I suppose so, sir, yes.

Senator DECONCINI. You stated the need to clarify the act's application to private placement of Indian children. How many children who are Navajos have been placed privately without the Navajo Tribe being notified? Do you have any numbers?

Mr. ROANHORSE. The States have been very good in terms of making notices to the Navajo Tribe, and there were some cases in the early part of the work that we have done where the State was not able to follow the procedures of the ICWA provisions, but we're able to go into the State court and then try to make those corrections.

But the 300 to 400 referrals that we get on an annual basis, I think, are beginning to now understand the provisions.

Senator DECONCINI. Well, do we know how many children have been placed privately?

Mr. ROANHORSE. No; I don't have that information at this time.

Senator DECONCINI. Is that available?

Mr. ROANHORSE. Yes; I can make that information available to you.

Senator DECONCINI. Would you, please? Thank you.

[Information to be supplied is in Mr. Roanhorse statement which appears in the appendix.]

Senator DECONCINI. How important do you consider the urban programs to be relevant to this subject matter?

Mr. ROANHORSE. The urban programs, those Indian organizations that are located off reservations in metropolitan settings, have been very helpful to the Navajo Nation. In cases where we don't have any Indian programs available in those areas, we often turn to these urban programs to help us in doing the social services investigation and in making contact with some of the family members within that setting. So they have been very helpful.

Senator DECONCINI. Thank you very much. Thank you, Mr. Roanhorse. We appreciate your testimony.

Mr. ROANHORSE. Thank you.

Senator DECONCINI. We will now have a panel of M . Leroy Littlebear, associate professor, University of Liftbridge; and Antonia Dobrec, president, Three Feathers Association; and John Castillo, chairman, ICWA. Mr. Littlebear is accompanied by Mr. Blood of the Blood Tribe Indian Association.

Gentlemen and ladies, if you would summarize your statements, your full statements will be placed in the record, and we would ask that you summarize them for us, please.

Who wants to lead off, if you would identify yourselves?

STATEMENT OF JOHN CASTILLO, CHAIRMAN, ICWA TASK FORCE, ORANGE COUNTY INDIAN CENTER, GARDEN GROVE, CA

Mr. Castillo. My name is John Castillo. I am the Indian Child Welfare Task Force chairperson. I have summarized my statement as best as possible. We are honored to have the opportunity to speak before this committee today. The American Indian Mental Health Task Force is a southern California grass-roots organization concerned about the mental health and welfare of Indian communities, particularly Indian children and families. The task force is comprised of members from the following Indian community organizations: Southern California Indian Centers, Los Angeles County Department of Mental Health, American Indian Program Development, Los Angeles County Department of Children's Services, American Indian Child Service Workers, Escondido Indian Child Welfare Consortium, Los Angeles Indian Free Clinic, Southern California American Indian Psychologists.

The following is our testimony. Today, 63 percent of American Indian people live in the cities, and Los Angeles is the home of the largest urban Indian population in the United States. We are the second largest urban Indian population. We are the second largest Indian community in the Nation. Members from over 200 different tribes now live in the area, and three-fifths of all urban Indians live below the poverty level, and in Los Angeles the poverty rate for American Indian people is 45 percent.

Indian people have the highest high school dropout rate, 23 percent, and if you were to include the number of students who never enter high school, this figure would increase to 65 percent.

Substance abuse is highest for Indian people versus other ethnic groups. Indian children suffer from mental illness at a rate of 20 to 25 percent.

These factors combined with other psycho-social stressors leave urban Indians at a high risk for mental illness and impaired ability to care for families and children. It is estimated that one out of every 46 Indian children within Los Angeles is placed within the custody of the juvenile dependency court. This figure does not include Indian children who have been put up for adoption out of the home and other institutions.

In 1985 a study estimated an 85 percent ICWA noncompliance rate within the State of California. It has been our experience that compliance is elevated with careful monitoring of Governmental services by Indian-run ICWA programs. In Los Angeles there currently is identified 206 Indian children within DCS—DCS being the Department of Children's Services—99 of whom are placed outside of family homes. Since identification of Indian children is a severe problem and past history indicates that the error rate might be as high as 100 percent, it appears that 200 Indian children in placement may be more of an accurate figure.

Providing the appropriate Federally mandated services is violated in many ways. Misidentification of Indian children is a very severe problem. Criminal attorneys and county counsel have little knowledge about ICWA, and they perceive this legislation to be a tool of manipulation for the parents. Most of the attorneys are reluctant to do the work involved. In Los Angeles County there is only one attorney who willingly works with ICWA cases. Private attorneys are frequently ignorant of ICWA law or choose not to follow it by instructing clients not to let the State social workers know the Indian heritage of the child up for adoption.

Children's service workers are sometimes prejudiced and intentionally violate ICWA. At a recent child abuse workshop three case workers openly admitted that they would intentionally violate ICWA because they believe it would be detrimental to the welfare of the child.

ICWA training results in improved communication between Government workers and the local Indian community more appropriate to the utilization of community services and increased ICWA compliance. Inadequate funding for legal services affects all aspects of Indian child welfare. In Los Angeles there is no mental health services available which have been designated to meet the unique cultural needs of the Indian people. Even when Indian people do utilize county services, they generally do not return, because services are insensitive to their needs.

Today, the Bureau of Indian Affairs chooses to determine that mental health psychological services are not fundable by their programs, even though such services are mandated in most cases by the courts.

These services are what enable parents to raise their level of functioning so that they can adequately care for their children. Not only should all ICWA programs contain funds for psychotherapy services, including psychological testing, but this must also be spelled out as part of the definition of remedial, preventive, and reunification services.

Although there is no hard data, American Indian clinicians, social workers, and psychologists agree that the most frequent psychological diagnosis is major depression that evolves from a long history of removal of Indian children from their homes. This removal has disrupted the bonding process prerequisite for a healthy development process.

The depression is frequently masked by substance abuse, is frequently debilitating, and the parents are unable to get out of bed to care for their children or necessary business. It is estimated in Los Angeles about 80 percent of Indian parents whose children are removed from the home wind up homeless. This makes unification even more difficult.

Although the population of American Indians is only six-tenths of a percent, 5.5 percent of the skid-row homeless are American Indians. Furthermore, over one-third of the Indian people served by native American housing and emergency housing programs are children, yet only three percent of these people achieve stable housing.

These families are at high risk for having their children removed. Urban ICWA programs must include case management and mental health services for these high-risk people as well.

The unavailability of Indian foster and adoptive homes, particularly in urban areas, contributes to the erosion of Indian culture throughout the United States. The State of California has more Indians than any other State, yet only 11 counties are covered by ICWA. Few directors of the Department of Mental Health have ever heard of the Indian Child Welfare Act. ICWA must spell out that urban Indian communities are entitled to funding for ICWA programs.

To ignore 63 percent of the Indian population is to contribute to the genocide of Indian people. The Indian Child Welfare Act is one of the most significant pieces of pro-Indian legislation. However, it accomplishes nothing if it is not backed by funding which accomplishes its goals.

Certainly, by providing extremely inadequate funding, as is now the case, the Government perpetuates intertribal conflict and conflict between reservations and urban communities. If that is the goal of Congress, then they are doing a good job.

In conclusion, we would like to recommend this: that ICWA funding be expanded to include urban programs, that each urban, rural, and reservation community assess their ICWA needs, and receive funding based on need.

ICWA programs should include money for: adequate legal representation; adequate mental health; case management; psychological services as part of preventive, remedial, and reunification services; services for homeless Indian families as part of preventive services; the development of adequate foster and adoption resources; and the training programs for the dissemination of materials. Any Indian child in Canada or the U.S. who is 25 percent or more Indian should be eligible for Indian child welfare, regardless of enrollment status. There should be no special group, no special interest group to be exempt for ICWA restrictions. And finally, that the Title II of the Indian Child Welfare Act be included as an entitlement program under the Social Security Act.

Thank you very much for your kind attention.

[Prepared statement of Mr. Castillo appears in the appendix.]

Senator DECONCINI. Thank you very much, Mr. Castillo.

Who would like to be next?

STATEMENT OF THURMAN WELBOURNE, REPRESENTING THREE FEATHERS ASSOCIATES

Mr. WELBOURNE. My name is Thurman Welbourne, and I am representing Three Feathers. The president of Three Feathers Associates and the director of projects, Ms. Antonia Dobrec, due to a prior commitment, is unable to be here. Therefore, I am here to present the testimony. Accompanying me today is Ms. Janie Braden, and we are both employed by Three Feathers Associates, and our job title is family court services counselor for the Court of Indian Offenses for the Anandarko area in Oklahoma. We have submitted written testimony.

We have been listening to the testimony since it started this morning. To avoid being repetitive, I would like to highlight two key areas with regard to Indian Child Welfare Act and the implementation of the act.

One of the recommendations is that the Secretary of the U.S. Department of the Interior be required to submit on an annual basis a report that would delineate the status of Indian children in substitute care within State public welfare systems, also tribal child welfare systems and Bureau of Indian Affairs systems, and the status of Indian children in preadoptive placement and the number of adoption decrees granted by courts serving these three systems.

Second, Congress should direct the Secretary of the Interior and the Secretary of the Department of Health and Human Services to jointly develop and implement a system for annual onsite compliance review of States and tribes providing services to Indian children.

Further, where it be found that noncompliance exists, he be provided in the act that would allow for withholding of all Federal assistance received by noncomplying States or tribes. The reason for this is that at present there is no standardized method of tracking of Indian children that enter the substitute care systems of the State, tribes, or BIA. As a result, it is highly improbable to determine an accurate accounting of the total number of Indian children in substitute care or to determine the level of service provided by each system.

In essence, it is very difficult to plan if we don't know where we've been. So the act that was enacted back in 1978—and has been in existence for 9 years, and I think we need to know what the system has been doing. I think the system that we are recommending in terms of a report would provide the Congress and the Indian community, the Indian people, as well as State and Federal agencies with some crucial documentation that would provide for more effective and efficient planning.

The second highlight that I would like to address to the committee is that the Indian Child Welfare Act should be amended to include a title that provides that the Secretary of the Interior, in a collaborative effort with the Secretary of Health and Human Services have the responsibility and sufficient funds to establish ongoing research and demonstration programs for Indian child welfare services, programs for the education and training of social workers and counselors and a national Indian child welfare center.

The national Indian child welfare center would serve as a clearinghouse of information, provide for resource material development, provide ongoing in-service training for child welfare workers, supervisors, administrators, and provide training and technical assistance for child welfare workers within the public welfare system. The current national child welfare center supported by the Department of Health and Human Services could serve as a model.

In concluding our testimony, we would make one last request. It would please us very much if Congress would resolve that the month of November 1988 be Native American Child and Family Month. Thank you.

[Prepared statement of Mr. Welbourne appears in the appendix.]

Senator DeConcini. Thank you.

Yes, sir?

STATEMENT OF LEROY LITTLEBEAR, REPRESENTING INDIAN ASSOCIATION OF ALBERTA, CANADA

Mr. Littlebear. My name is Leroy Littlebear. I am from the Blood Indian Tribe in southern Alberta, Canada. I have with me Narcisse Blood, who is also from the same tribe, and we are representing the Indian Association of Alberta.

Originally, we were supposed to have another party with us in the person of Alexander Denny of the Mikmaq Grand Council from the Province of Nova Scotia, but unfortunately Mr. Denny was unable to make it, so we are here to kind of speak both for the Grand Council and the Indian Association of Alberta.

We are here to speak to and propose some amendments to the Indian Child Welfare Act for purposes of having Canadian Indian children included in the Indian Child Welfare Act. It is of utmost importance to include aboriginal Canadians in the scope of the Indian Child Welfare Act. Although there is no comparable national legislation in Canada, a number of provinces have enacted similar provisions and the trend is toward greater devolution of child welfare responsibilities to aboriginal organizations.

The international border physically divides more than a dozen major aboriginal nations, and it is a tragic fact that aboriginal Canadian children are separated from their communities by social welfare agencies in the United States each year.

Although there are Blackfoot reserves on both sides of the border, for example, a Blackfoot child from the Blood reserve in Alberta taken into custody while visiting relatives on or near the Blackfeet reservation in Montana is not Indian under the Indian Child Welfare Act and therefore need not be returned to either reservation.

Because of the depressing economic conditions on most reserves in Canada, a great number of aboriginal Canadians seek temporary, largely seasonal work in the United States each year. Several thousand Mikmaqs work each summer in the blueberry and potato fields of Maine, for instance, and there has been a substantial Mikmaq community in Boston, consisting of temporary as well as permanent U.S. residents, for more than two centuries. The same can be said of Indians from the Province of British Columbia and the Province of Alberta, going down to the State of Washington to work in fruit orchards.

Indian families residing temporarily in the United States suffer from exactly the same stereotypes and biases on the part of social welfare agencies as U.S. Indians have reported. They have fewer resources to protect themselves, moreover, because they are not only not Indians under U.S. law but also non-citizens.

While we welcome the initiative taken by the Association on American Indian Affairs in this regard, its proposal to add the words—and I quote—"tribes, bands, nations, and other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof" to the definition of Indian tribe is incomplete and not compatible with Canadian conditions or administration.

In our view, it would result in judicial and administrative confusion, inconsistent results, and too little protection. It is essential that any reference to Canada added to the Indian Child Welfare Act: A, be consistent for the sake of precision and clarity with Canadian terminology; B, be realistic and appropriate in terms of the organization and administration of aboriginal communities in Canada; and, C, place aboriginal Canadian and American Indian children on equal footing as far as possible.

Achieving this will require, in our view, a new explanatory section of the act rather than simply lumping Canadian children into existing provisions without adjustments.

Before introducing our proposed text, some background on aboriginal Canadians will be useful. Under section 35 of the Canadian Constitution, 1982, there are three aboriginal peoples of Canada: Indians, Inuit, and Metis. Most aboriginal groups refer to themselves as First Nations.

The Indian Act provides for the registration of Indians, and registered Indians may or may not also be listed as members of particular bands. Bands exercise various degrees of internal self-Government under the Indian Act and agreements with the minister. In northern Quebec, for instance, an alternative form of Indian regional Government has been established since 1975 as part of a comprehensive land claims agreement. Except as provided by treaty or agreement, provincial child welfare laws apply on Indian reserves.

Inuit are not organized into Indian Act bands, and there are no reserves in the northwest territories in the northern part of Canada. The Inuit of northern Quebec, for instance, have established the regional administration as part of their land claims agreement with Ottawa, but Inuit self-Government elsewhere is conducted by village mayors and councils under both Federal and territorial supervision.

Inuit legal status is in a dynamic state, pending the settlement of land claims to two-thirds of the Arctic, and one proposal under serious consideration is the organization of a new, predominantly Inuit province.

The third group, Metis, properly speaking are prairie groups of mixed French and Indian ancestry. Many still live in distinct rural communities, particularly in Manitoba, Saskatchewan, and Alberta.

In addition, there are thousands of nonstatus Indians throughout Canada whose ancestors were enfranchised involuntarily because of marriage to non-Indians or under a program which resembled the United States forced-treaty policy of the early 1900's. Canada recognizes national-level Metis and nonstatus political organizations only.

While bands are the basic unit of Indian Act administration, they are artificial constructs based on residence on a reserve rather than cultural unity. Some bands are multitribal, but in a majority of the cases, the ethno-historical tribe or nation is divided into several bands. Although bands have called themselves First Nations, they are not nations in the same sense as Navajo or Hida. In many instances, including Mikmaq and Blackfeet, the traditional national political organization persists, but is not recognized by Canada.

The situation is further complicated by what we refer to as provincial territorial organizations. Originally authorized in 1972 to pursue land claims, these provincial territorial organizations receive Federal funding for a variety of human services programs. Other regional aboriginal human service organizations have also emerged recently outside of the band, tribe, or PTO structure.

The supreme position of bands, PTO's, other Government-funded aboriginal organizations and traditional——

Senator DeConcini. Excuse me, Mr. Littlebear. Can you conclude and summarize, please? We will put your full statement in the record.

Mr. Littlebear. Okay. Well, I guess the point of all this is to emphasize the necessity of taking Canadian organizational differences into account insofar as they affect the locus of responsibility for child welfare.

What we are wanting to basically propose is that there be a designated agent provision in the Indian Child Welfare Act and that this designated-agent provision consist of maybe several references to which Indian children that may be apprehended by social welfare services here in Canada that can be turned to for purposes of repatriating Canadian Indian children back into Canada and from there into Indian communities.

If you will permit me, I will just go over our proposal for a new section. Section 25 is a new section we are proposing, would be section 125 titled "Aboriginal Peoples of Canada."

Senator DeConcini. Can you summarize that, Mr. Littlebear, please?

Mr. Littlebear. Yes.

Senator DeConcini. Thank you.

Mr. Littlebear. What we are proposing is that aboriginal peoples of Canada be included in the Indian Child Welfare Act, that the Indian child's tribe in the case of aboriginal people of Canada shall be the child's Indian band or organization that may have some responsibility for child welfare, and for purposes of section 102 of this act, notice shall be given to the Government of Canada who is responsible for Indians and the land reserves for Indians.

Last but not least, in any State court child custody proceeding involving an aboriginal Canadian child, the court shall permit the removal of such case to the aboriginal, provincial, or territorial court in Canada which exercises primary jurisdiction over the territory of the child's tribe upon a petition and, of course, absent unrevoked parental objection as provided for in other cases by sections of the Indian Child Welfare Act.

Senator DeConcini. Thank you.

Mr. Littlebear. So basically, what we are saying is to have Canadian Indian children protected under the Indian Child Welfare Act.

Senator DeConcini. That notice be given being one of those things.

Mr. Littlebear. Right.

[Prepared statement of Mr. Littlebear appears in the appendix.]

Senator DeConcini. Thank you.

Mr. Castillo, I am sorry my time is running out, as everybody's is here. But is there any Indian Child Welfare Act programs in Los Angeles now?

Mr. Castillo. No; there is not.

Senator DeConcini. There is not.

Mr. Castillo. That is why we formed the Indian Child Welfare Task Force to work with the county in providing a vehicle for at least abiding by the Federal mandate, Federal law.

Senator DeConcini. So you get no services now under this act?

Mr. Castillo. No; we do not.

Senator **DeConcini**. Thank you.

I have no further questions. Thank you very much, gentlemen, for your testimony.

The committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 4:56 p.m., the committee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF SENATOR FRANK H. MURKOWSKI

Mr. Chairman, I am pleased that the Committee is holding this oversight hearing on the implementation of the Indian Child Welfare Act which was enacted on November 8, 1978. This law was passed in response to Congressional findings that a high percentage of Indian and Alaska Native families were being broken up and that children were being placed in non-Indian foster and adoptive homes and institutions.

At the time this act was being considered it was reported by the American Indian Policy Review Committee that the rate of removal of Native children from their homes and placement in foster care was 300 percent higher than the rate for non-Native foster placement. The adoption rate for Native children was 460 percent higher than non-Native children, and 93 percent of the adoptive homes were non-Native. Clearly there was a need to provide protection and assistance to American Indian and Alaska Native children and their families.

I am looking forward to hearing from today's witnesses on how the Indian Child Welfare Act has been implemented in Alaska. I am pleased to welcome Ms. Julie Kitka from the Alaska Federation of Natives, Mr. Alfred Ketzler, the Vice-President of the Tanana Chiefs Conference, Fairbanks, Alaska, and Ms. Myra Munson, the Commissioner of the Alaska State Department of Health and Social Services. I am sure your comments will be helpful to the committee.

OPENING STATEMENT FOR SENATOR DANIEL J. EVANS
ON THE INDIAN CHILD WELFARE ACT OVERSIGHT HEARING

THANK YOU MR. CHAIRMAN. WE ARE HERE TODAY TO REVIEW A VERY IMPORTANT LAW WHICH SERVES TO PROTECT ONE OF THE MOST VITAL RESOURCES IN INDIAN COUNTRY; THE CHILDREN. IT IS SAID BY THE HEALING PEOPLE OF THE MAKAH, WHO RESIDE AT THE MOST NORTHWESTERN TIP OF THE CONTINENTAL U.S., THAT WHEN A CHILD IS BORN THE GIFT OF LIFE MUST BE BREATHED GENTLY INTO HIS MOUTH. AND FOLLOWING THAT GREAT DAY, THE BREATH, THE SONGS AND GESTURES OF CARING MUST BE CONSTANTLY BESTOWED UPON THAT CHILD. IT IS THIS CULTURAL WAY OF LIFE THAT IS PROVIDED TO INDIAN CHILDREN AND MUST BE MAINTAINED SO THAT THESE CHILDREN WILL THRIVE AND MAKE THE WORLD A BETTER PLACE.

IT IS OUR DUTY IN THE SENATE TO HELP MAINTAIN AND PROTECT THIS WAY OF LIFE. FOR NEARLY A DECADE, THE INDIAN CHILD WELFARE ACT HAS SERVED AS A MEANS FOR PROTECTING INDIAN CHILDREN FROM BEING PLACED IN ADOPTIVE AND FOSTER-CARE SETTINGS WITH NON-INDIAN FAMILIES. HOWEVER, THE LACK OF SUFFICIENT RESOURCES AND CHANGING PHILOSOPHICAL OPINIONS ON WHAT IS IN THE BEST INTEREST OF THE CHILD HAVE DIMINISHED THE ABILITY OF TRIBES TO CARRY OUT THE INTENTIONS OF THE LAW. IN FEW INSTANCES, THE NEGLECT OF THE COURTS TO FOLLOW THE LAW MAY STEM FROM LACK OF KNOWLEDGE OR EVEN RACISM. THIS IS VERY UNFORTUNATE AND WE MUST CONSIDER OPPORTUNITIES FOR CORRECTING THIS SITUATION.

YOUR RECOMMENDATIONS AND THOSE OF COUNTLESS TRIBES WILL BE

CONSIDERED AS I DEVELOP A BILL TO AMEND THE INDIAN CHILD WELFARE ACT. I AM HOPEFUL THAT WITNESS TESTIMONY WILL OFFER PRACTICAL SOLUTIONS FOR IMPROVING THIS VITAL AND INTEGRAL LAW. IT IS VITAL IN THE SENSE THAT WE MUST CONTINUE TO BREATH LIFE INTO INDIAN CHILDREN. AND INTEGRAL IN THE FACT THAT WE MUST SUSTAIN THE CARING PROVIDED BY INDIAN FAMILIES AND THEIR COMMUNITIES. I LOOK FORWARD TO HEARING YOUR TESTIMONY.

STATEMENT OF GARY PETERSON, DIRECTOR, SOUTH PUGET INTERTRIBAL PLANNING AGENCY (SPIPA) AND CHAIRMAN OF THE INDIAN CHILD WELFARE ADVISORY COMMITTEE OF THE AFFILIATED TRIBES OF NORTHWEST INDIANS

Mr. Chairman, members of the Select Committee, I appreciate the opportunity to address you today on a matter that is critical to the survival of Indian communities, the Indian Child Welfare Act. I am from the Skokomish Indian Tribe in the State of Washington. In my capacity as director of SPIPA I have had the opportunity to work with Indian social workers and Tribal governments throughout the Northwest during the last four years.

SPIPA administers a social services contract under 638 contract guidelines for the following tribes: Makah, Lower Elwha, Quileute, Jamestown Klallam, Skokomish, Squaxin Island, Chehalis, and Shoalwater Bay. We also administer a contract with the State of Washington to provide children and family services to the above mentioned tribes and the Nisqually Tribe.

I currently serve as chairman of both the Affiliated Tribes of Northwest Indians Indian Child Welfare Advisory Committee and the Northwest Indian Child Welfare Association.

The Tribes in the Northwest have prioritized Indian Child and family issues and have been actively involved in identifying problems and developing solutions to these problems. A major problem we confront is a lack of reliable, adequate sources of funding for social services programs, particularly child welfare. The Bureau of Indian Affairs has arbitrarily administered the Title II ICWA grant program. Year after year, the level of funding has been grossly inadequate and the distribution process poorly managed. We have advanced several solutions to the funding problems, including establishing Title II as a fully funded entitlement program ($25-35 million/yr not 8.8 million as at present) and mandating a tribal set-aside for funding under the Title XX Social Services Block Grant and other related social services and child welfare programs that are currently aimed only at the states. We are aware of the Association on American Indian Affairs (AAIA) draft legislation to address this issue and believe that its approach is consistent with the positions we have long advocated.

Another set of problems that we have faced are those arising from a lack of clarity and completeness in certain parts of the Indian Child Welfare Act. While the Act has been a tremendous tool for the tribes to use on behalf of our families and children, its phraseology is sometimes ambiguous. This has led, unnecessarily, to problems and court disputes. Moreover, in some cases the Act does not go far enough. For instance, we strongly believe that there should be mandatory notice to the tribe of voluntary placements. It is for these reasons that we have advocated amending the Indian Child Welfare Act to strengthen it.

The Association on American Indian Affairs has submitted amendments to the Act to the staff of your committee. We have discussed the need for these amendments with the Association and are aware that others have also submitted proposed amendments. I am not prepared today to comment on amendments specifically but support the approach of amending the Act. We will comment extensively when a draft bill is prepared.

To that end we urge the Committee to act promptly on these initiatives. The problems caused by "loopholes" in the Act and sporadic, unreliable, poorly managed funding gets worse as time goes by, not better. We need quick action in the 100th Congress. Quick action by the Congress will enable Tribal governments to avoid the loss of their children and the disruption and destruction of their families.

Another issue that we believe that the Committee should be aware of is the is the failure of the BIA and IHS to incorporate maximum participation of the tribes in Federal programs administered for them. Tribes should not need to contract in order to have programs in accordance with their needs and desires. Rather, there should be a stronger mechanism for ensuring that policies and priorities of tribes are in fact reflected in Federal Indian Programs. For example, the implementation of the Alcohol and Drug Abuse Prevention Legislation. The BIA and IHS are now mandating child protection services teams. We have opposed this concept as currently conceived because we believe that this is an inadequate approach to the problem of alcohol and drug abuse, particularly in view of the lack of training of most BIA and IHS social workers in this specialized field. Tribes have numerous ideas for the use of this money that would be much better targeted to the need. Yet, without adequate input, the federal government has decided to spend significant amounts of money on these teams-- teams which are unlikely to have a significant impact in most instances.

Another concern that we would like to raise with the Committee is the failure of the Bureau to adequately fund tribal courts. In order to properly and fully implement ICWA, adequately staffed and trained tribal courts are essential. We urge Congress to increase funding for tribal courts.

In conclusion, these are but a few of the problems that we might have identified in the Indian Child Welfare area for your consideration. Tribal governments are working hard to protect Indian children and families. Your support and assistance in addressing these concerns and others will bring about positive change in the lives of Indian Children and families.

TESTIMONY OF THE ASSINIBOINE AND SIOUX TRIBES

OF THE FORT PECK RESERVATION

before the Senate Select Committee on Indian Affairs
Oversight hearing
on the Indian Child Welfare Act

By: Caleb Shields, Member
Tribal Executive Board
Assiniboine and Sioux Tribes
of the Fort Peck Reservation

November 10, 1987

TESTIMONY OF THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

before the Senate Select Committee on Indian Affairs

Oversight hearing on the Indian Child Welfare Act

Mr. Chairman and members of the Committee, I am Caleb Shields. I am a member of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana. I appreciate the opportunity to testify before this Committee concerning needed amendments to the Indian Child Welfare Act.

The Fort Peck Tribes have been very active in matters affecting the welfare of their children. Two years ago, we made substantial revisions to our juvenile code which were designed to improve adjudication of Indian child welfare cases. We have just received a $100,000 multi-year grant to establish a model treatment program for victims of sexual abuse, which will be the first of its kind in Indian country.

In addition, we recently negotiated an agreement with the State that will permit Indian children on our Reservation to receive Title IV-E payments for foster care, and also requires the State to assist in providing protective services to Indian foster children. The agreement is significant in other respects as well-- for example, it recognizes our Tribal Court's jurisdiction over children who are members of tribes other than the Fort Peck Tribes, and provides that the State will recognize tribal foster care licensing standards for purposes of federal foster care payments.

Our experience in Indian child welfare matters includes intensive observation and evaluation of the functioning of the Indian Child Welfare Act. Enacted in 1978 to stop the wholesale removal of Indian children from their homes and culture, the Act has greatly increased tribal courts' ability to exercise jurisdiction over Indian children. It has also increased the procedural protections for Indian children who do end up in state courts. However, ambiguities and gaps in the Act have made it less effective than it should be. The Fort Peck Tribes commend the Committee for taking the time to re-evaluate the Act and consider needed changes.

Our comments on the Act will follow the draft bill prepared for this Committee's consideration by the Association of American Indian Affairs.

Definitions. One of the most crucial sections of the Indian Child Welfare Act is the definition of "Indian child." The Act currently limits this definition to children who are members of or eligible for membership in a tribe. The Act implies, although it is unclear on this point, that tribal court jurisdiction is limited to children who are members of that particular tribe. This leaves out two crucial classes of Indian children-- children who are Indian but not eligible for membership in any tribe, and children who are members of one tribe but reside on another tribe's reservation.

Abused, neglected, and abandoned children who are members of an Indian community should have their cases heard in tribal court. This is a fundamental principle of the Indian Child Welfare Act, and should apply regardless of tribal affiliation. Otherwise, Indian children will continue to be placed in nonIndian foster homes and lost to their Indian communities.

There is another compelling reason to recognize tribal court jurisdiction over all Indian children. Some state courts want nothing to do with any Indian children, regardless of tribal membership. This is the case in Roosevelt County in Montana, where the local judge has refused to hear cases involving Indian children, even where those children are not members of the Fort Peck Tribes. In spite of this, the state social workers will not file these cases in Tribal Court because at least until recently, the State did not recognize tribal court jurisdiction over any children who were not members of the Fort Peck Tribes. Congress must end this Catch-22 by acknowledging tribal court jurisdiction over all Indian children. Unlike state courts, tribal courts are ready and willing to handle all these cases, and are more likely to place these children within the Indian community.

The draft bill does not deal with children who are tribal members, but not members of the tribe on whose reservation they reside. We suggest that a section be added to the bill to cover this situation. The tribal court on the reservation where the child resides should have concurrent jurisdiction with the court on the reservation where the child is a member. The tribal court would notify the membership tribe of the pending case, and give that tribe the opportunity to request transfer of jurisdiction. Decisions on transfer of jurisdiction would be made under the same standards as apply to transfers from state court to tribal court. If the membership tribe did not request transfer of jurisdiction within a reasonable time, or its request was denied, the other tribal court would retain jurisdiction, subject to the membership tribe's right to intervene. We already use this procedure at Fort Peck, and it works well.

The draft bill seeks to extend the protections of the Indian Child Welfare Act to children who are not members of any tribe as long as they are considered members of the Indian community. We agree with this completely. However, the definition of Indian child for this purpose should include the requirement that the child be of Indian descent.

Transfer of jurisdiction to tribal court. The Act currently provides that where tribal and state courts have concurrent jurisdiction, the state court must transfer a case to the tribal court unless there is good cause to the contrary or unless either parent objects. This part of the Act has not worked as intended. The "good cause" requirement is vague, and gives state courts too much latitude to refuse a tribal request for transfer. And, parents can block tranfers simply because they don't want their cases heard by tribal court. This entirely defeats the purpose of the Act.

The draft bill would delete the good cause requirement and substitute several specific grounds for refusal to transfer jurisdiction. We generally support this, but request one change. The draft bill would permit a state court to refuse a petition to transfer if the petition were not filed within "a reasonable time." This should be changed to give tribal courts and Indian parents a minimum period of thirty days to request transfer. Otherwise, the reasonable time requirement will be abused by state courts.

The draft bill would permit parents to block transfer of jurisdiction to tribal court only if their objection to transfer were consistent with the purposes of the Act. The Fort Peck Tribes support this amendment. Irrational fears about tribal courts should not be permitted to deprive these courts of the opportunity to adjudicate cases involving Indian children. As demonstrated by the recent well-publicized case in Navajo Tribal Court, tribal courts can handle even the touchiest cases in a fair and orderly way.

Procedural rights in state courts. An earlier version of the draft bill would have clarified that Section 102 of the Act applies to voluntary court proceedings as well as involuntary proceeedings. This means that the procedural protections, such as the right to court-appointed counsel, access to records, and efforts to reunite the family, would apply to proceedings where a parent seeks to give up a child on a "voluntary" basis. The Fort Peck Tribes support this proposal, and urge that the Committee include it in the bill to be introduced.

This change is much-needed, for the simple reason that voluntary proceedings are still abused by the states. Parents are persuaded to sign over their children to foster homes rather than having a petition of abuse and neglect filed against them. This is quicker and easier for the states, and also allows them to virtually ignore the Indian Child Welfare Act, including such basic protections as notifying the Indian child's tribe. Application of procedural protections to voluntary proceedings will mean that more cases will be transferred to tribal court, and that more parents will understand their rights and receive services to help them reunite their families.

The draft bill would add a new subsection (g) to Section 102 of the Act. This subsection would provide that certain conditions, such as inadequate housing and alcohol abuse, do not constitute evidence that a child should be removed from his home. The thrust of this section seems to be that conditions of poverty beyond the family's control should not result in removal of the family's children. We agree with this, but do not agree with the wording of the subsection. First, we are concerned about including alcohol abuse on the list. The role that alcohol abuse plays in abuse of children and destruction of families should not be minimized. Second, the term "non-conforming social behavior" is too vague and detracts from the focus on the family's poverty.

We suggest that only the language about family and community poverty be retained. This makes the purpose of the section much clearer. The second sentence of the subsection, requiring a direct causal connection between conditions in the home and harm to the child, should be placed in a separate section. This new section will ensure that parents are not penalized for any conditions in their home that do not adversely affect their children.

Placement preferences for Indian children. The Indian Child Welfare Act establishes preferences in placement of Indian children by state courts, both for foster care and adoption. However, there is a "good cause" exception to these placement preferences. The draft bill would remove this general exception, and would substitute several specific exceptions. The Fort Peck Tribes support this change, which will provide better guidance to state courts. However, we suggest that the request by an older child for a placement outside the preferences be simply a factor, not a controlling factor, in the court's decision.

The draft bill would also describe the efforts a state must make to locate a placement within the order of preference. We support this, because state courts are too quick to claim that they cannot locate a suitable Indian foster family-- often after failing even to contact the child's tribe or members of his extended family.

We do suggest one change in this section. In addition to contacting the tribe, the state should be required to contact the BIA agency, which often has information on available Indian foster homes.

The draft bill provides that notwithstanding any state law to the contrary, state court judges can permit continued contact between the Indian child and his family or tribe following an order of adoption. The Fort Peck Tribes strongly support this amendment, which will be particularly important where Indian children are adopted by nonIndian families. The amendment should be strengthened even more by a requirement that nonIndian adoptive families be required to take steps to keep the child in touch with her Indian heritage. We have entered orders of this kind in Fort Peck Tribal Court and have been pleased with the results.

Petitions to invalidate state court orders. The Act gives parents, custodians, and the tribe the right to file a petition to invalidate a state court order if that order violates particular provisions of the Act. The effectiveness of this provision has been limited in one important respect-- it does not include violation of the placement preferences as grounds for invalidating a state court order. The placement preferences are crucial to the purposes of the Act, and furthermore, they are violated frequently. The Fort Peck Tribes strongly support Section 105 of the draft bill, which would add violation of the placement preferences as grounds for invalidating state court orders.

Section 105 of the draft bill also provides that petitions to invalidate a state court order can brought in federal court. We support this provision, because in our experience state courts are very slow to invalidate their own orders in Indian child welfare cases. Also, there would be fewer violations of the Indian Child Welfare Act in the first place if state courts knew that their orders would be subject to federal review.

State's obligation to provide services to Indian children. The draft bill would add a new Section 101(f) to the Act, providing that nothing in Section 101 authorizes a state to refuse to offer social services to Indians on the same basis that it offers them to other citizens. The Fort Peck Tribes strongly support this provision. We see the necessity for it very clearly, because in Montana the Attorney General has used the Indian Child Welfare Act as an excuse to rule that the state cannot provide services to Indian children who are within tribal jurisdiction. Although we have made some progress on this issue through our foster care agreement with the State, there is still great reluctance to acknowledge the State's obligations to its Indian citizens.

Now that the BIA's social services budget is so limited, it is simply not realistic, much less legal, for states to assume that the BIA takes care of all Indian social service needs. States must be required to provide needed services to Indians. Tribal/state agreements are useful to establish the best means for the states to do this, but these agreements only affirm, they do not create, the states' duty in this respect.

Indian Child Welfare Act grants. The Fort Peck Tribes have a concern about the Indian Child Welfare Act grant programs. For the grants that serve children on and near Indian reservations, Indian tribes and organizations have equal priority. This has created problems for us at Fort Peck. Until two years ago, we were receiving a grant to operate a foster home licensing program. We lost that grant and at least two other tribes lost theirs as well. At the same time, an urban Indian organization began to receive a sizeable grant. We have no objection to urban organizations receiving grants for off-reservation programs, but we feel strongly that tribes should have first priority for grants to serve children on and near Indian reservations. We need these grants to assist us in exercising jurisdiction over our children. Tribes that have this direct and crucial responsibility should have primary access to grant funds.

I thank the Committee for the opportunity to testify on these important issues, and I would be glad to answer any questions you may have.

STATEMENT OF

ALFRED R. KETZLER, SR.
Director of Native Services
Tanana Chiefs Conference, Inc.
201 First Avenue
Fairbanks, Alaska 99701

before the
SELECT COMMITTEE ON INDIAN AFFAIRS
U. S. SENATE

OVERSIGHT HEARINGS
ON
THE INDIAN CHILD WELFARE ACT

November 10, 1987

My name is Al Ketzler. I'm the Director of Native Services of the Tanana Chiefs Conference, Inc., a regional consortium of 46 Interior Alaskan Tribes. I have also been a Board member of the Association on American Indian Affairs for the last 15 years. I wish to thank the Committee for the opportunity to address you today on the implementation of the Indian Child Welfare Act.

In 1987, eight years after passage of the Indian Child Welfare Act, the problems which the Act tried to rectify have worsened in the State of Alaska.

The 1976 survey done by the Association on American Indian Affairs, which ultimately led to the enactment of the Indian Child Welfare Act (ICWA), found there was an estimated 393 Alaska Native children in State and Federal out of home placement. In 1986, that figure had risen to 1,010, which represents a 256% increase. During the same period of time, the total population of Alaska Native children increased by only 28%.

The figures are even more disturbing when one considers that the Alaska Native population is only 14% of the total Alaskan population, yet Alaska Native children make up 49% of the state's out-of-home placement. The disproportionate adoption of Native children is equally appalling. For the year 1986, out of all the children placed in adoptive homes by the State of Alaska, 64% were Alaskan Native.

As the figures indicate, the removal of our children from our homes and culture continue at a rate that far exceeds our population. The problems in Alaska continue to worsen for Native children.

After removal of the Native child, his/her chances of being placed in a Native home are not very good. At best, the child has a 59% chance in those areas of the state that are predominantly Native. In the more urban areas of the state, the figure drops to as low as 4%. These statistics, which are based on raw data obtained from the State of Alaska, demonstrate that Native children are being removed from their homes and placed in non-Native placements at a greater rate today than estimated in 1976. In 1976 Congress was alarmed. We believe that in 1987 Congress should be outraged, and take steps to strengthen the ICWA to stop this in the future.

Tanana Chiefs Conference, Inc. (TCC) has attempted to enforce the ICWA with only marginal success. Our region is one of the best in placing Native children in Native homes, but still over 54% of our children in State foster care are in non-Native homes. Sadly, many of these children have relatives who are capable of taking care of them and have requested the children to be placed with them, but are denied by state officials.

There are some reasons why we have had only marginal success. The biggest is the lack of resources. Title II funds available under ICWA are competitive. Tribal programs are funded based upon their grant writing ability, not on need or on the quality of the tribal program. This means that tribal programs are sporadically funded and we do not know if we will be funded from one year to the next. An average child protection case will last for two years, so that it is not clear whether our tribal program will survive long enough to provide services to a child in tribal protective custody.

Our tribes are denied any federal assistance for tribal foster care. The State of Alaska receives federal support for State foster care under Title IV-E of the Social Security Act and may share that with the tribes if it wishes. However, the State of Alaska has decided not to negotiate any agreement which would allow federal assistance for tribal foster care. Consequently, our tribal foster care is either voluntary, or funded under some other program for which the child might otherwise be eligible.

Another problem in our enforcement effort is the time litigation takes. Often, if we challenge a placement in State court, the litigation takes between two and three years. TCC villages have been faced with the difficult problem of overturning an adoption on a foster care placement only to find that the child has bonded to the foster/adoptive family. Should the tribe remove the child, causing problems for the child now or allow the child to stay and cause the child pain in adolescence and adulthood, resulting from the child's alienation from his/her people? In considering litigation, the State will often engage in this type of moral blackmail, asking the tribe to allow an illegal placement and avoid causing the child the trauma of uncertainty over his/her future which prolonged litigation will cause.

ICWA needs to be strengthened. Title II funding for tribes under the Act should be stabilized and allocated to tribes in a similar manner as Self-Determination Act contracts [PL93-638]. Federal foster care assistance needs to go directly to the tribal agencies and should not be subject to State veto. Finally, the loopholes and legal ambiguities that allow extended litigation needs to be tightened to ensure that Native children are removed from their homes only when absolutely necessary and placed in their tribal foster homes or other Native homes.

While these are our major general concerns, we will also submit more detailed suggestions to the Committee shortly. We thank you for your interest and urge the Committee to take action to strengthen ICWA.

STATEMENT OF HAZEL ELBERT, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON THE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

November 10, 1987

Mr. Chairman and members of the Committee. I am pleased to be here today to report on the progress in the implementation of the Indian Child Welfare Act (ICWA) of 1978.

The Indian Child Welfare Act of 1978 (P.L. 95-608; 25 U.S.C. 1901 et seq., 92 Stat. 3069) recognizes that the tribe has the primary authority in matters affecting the welfare of the Indian children and their families residing on their reservations. The Act is not limited to reservation based tribes however. It extends to tribes in Oklahoma occupying lands within former reservation areas, and to Alaska natives. The Act recognizes the traditional role of state agencies and courts where an Indian child or his family does not reside on a reservation and has specific provisions for transfers of cases from state to tribal courts. In cases where a state retains jurisdiction, the Act authorizes tribes to intervene in the proceedings and participate in the litigation; it imposes certain evidentiary burdens in state court proceedings and establishes placement preferences to guide state placements.

Title I of the Act focuses on legal issues, including individual custody proceedings, legal representation in custody matters and reassumption of jurisdiction. We are aware that these procedures have been the basis for litigation in recent years although we are not parties in those cases. You may be aware of the highly publicized case of the Navajo boy who was adopted by a non-Indian family in 1980. The birth-mother later filed suit on the basis that proper procedures were not followed and the Utah Supreme Court agreed. In 1986 the case was returned to the jurisdiction of the Navajo court to decide the best placement for the child. We are pleased that a settlement has been reached between the parties that appears to be a reasonable arrangement for all concerned.

Although the Navajo case has been the most publicized, it has not been the only case taken to court under Title I of the Act. Although the procedures under Title I we believe, are clear, it may be many years before all states and tribes are aware and fully understand them.

The primary reason Indian children are separated from their families and enter into foster care systems is because of child abuse or neglect. For the month of August 1987, 15% of the total complaints of possible child abuse and neglect involved physical abuse, 69% involved neglect, 12% involved sexual abuse and 62% involved alcohol or substance abuse. Althougn we do not have statistical data to identify the number of Indian child custody proceedings handled nationwide on an annual basis, the information available which most closely reflects this number would be the total number of Indian children in foster or out of home care. As of June 30, 1986 that number was 9,123. We currently have an interagency agreement with the Department of Health and Human Services to complete a study on children in out-of-home-placements. The draft findings of that study indicate that 52% of the children were under state care and 48% were under tribal, Indian organization, or BIA care.

The BIA and IHS have cooperatively developed Child Protection Team procedures and reporting requirements. They have been developed to ensure that reports of suspected child abuse and neglect are handled in a timely manner and to assess any immediate threat to a child's safety. The teams will include social service agencies in communities and provide them an opportunity to share information and resources and plan for children and families involved in child abuse and neglect situations.

We have also entered into an inter-agency agreement with the Department of Health and Human Services to fund model sexual abuse treatment and prevention programs on the Hopi and Ft. Peck Indian reservations.

Title II of the Act authorizes the Secretary of the Interior to make grants to Indian tribes and tribal organizations to establish and operate Indian child and family service programs. In Fiscal Year 1987, 128 grants were funded with a total appropriation of $8.8 million. Currently, 48 percent of the grants are multi-year grants and the remainder are single year. Multi-year grants were initiated in 1986 and the current multi-year cycle will operate through the 1988 funding cycle. The multi-year grants were developed out of recommendations originating from the 1984 oversight hearing. This procedure has been so successful we are currently considering accepting only multi-year applications when the new multi-year cycle begins in Fiscal Year 1989.

Title III of the Act requires state courts to provide the Secretary of the Interior with a copy of any decree or order in an adoptive placement of an Indian child, and authorizes the release of such information to the child at the age of 18 in order to be enrolled in his or her tribe. Attached to my written statement is a list that identifies the total number of adoptions by state. However, states have not been diligent in their reporting and recent contacts with individual states indicate this may be a serious undercount. Our area offices have been directed to contact all states in their jurisdiction to obtain more accurate information.

Title IV of the Act required a report to Congress on the feasibility of providing Indian children with schools located near their homes. This report has been completed.

The information we have provided today is very limited and highlights only some of the concerns addressing Indian children and families. We believe that the Indian Child Welfare Act has made a difference in meeting the needs of Indian children in need of foster and out-of-home placements. We are aware that the Committee staff has circulated to the tribes some draft bills to amend the Act. We did not receive those drafts until just last week and therefore have not had time to review them. We would be most pleased to provide our written comments at a later date.

This concludes my prepared statement. I will be happy to answer any questions the Committee might have.

ATTACHMENT

ADOPTION STATISTICS PURSUANT TO THE INDIAN CHILD WELFARE ACT OF 1978 FROM 1978 - 1986

	1978	1979	1980	1981	1982	1983	1984	1985	1986
Alabama				1					
Alaska		20	36	45	46	81	84	106	92
Arizona		13		2	2		1	3	2
California		1			1				1
Colorado		5	4		1	3	5	2	4
Florida					1				
Idaho				1					
Illinois		2							
Indiana							1		1
Iowa							1		
Kansas			1			1	1		2
Maine			1						
Massachusetts			1						
Michigan				1	2				
Minnesota	4	14	13	13	9	12	19	20	12
Mississippi			2						
Nebraska		1	2			7	1		2
New Mexico						1			1
New York			2	1		1	1		
North Carolina		3					1		
Oklahoma		5	15	7	10	4	22	12	13
Oregon				1	1	2		3	3
South Dakota		2	2	1					
Texas								3	
Utah			2		2		1	1	
Virginia							1		
Washington		3	1			3		1	3
Wisconsin		2	5	3	2	1	2		2
Wyoming				1					

Data reflects number of adoption proceedings reported by states.

U.S. Department of Justice
Land and Natural Resources Division

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C-7

Office of the Assistant Attorney General
Washington, D.C. 20530

May 21, 1986

Honorable Ralph W. Tarr
Solicitor
United States Department
of the Interior
Washington, D.C. 20240

Dear Ralph:

This responds to your request that the Department of Justice file an amicus brief in Colorado in the Interests of Ashley Ann Taylor, Case No. 845JV689, Div. 6, District Court, County of Arapahoe, Colorado. You specifically request that the United States assert that the paternal grandparents be given precedence over unrelated Indian foster parents in this adoption proceeding pursuant to section 105 of the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1915.

This case involves a twenty-one month old child, a member of the Choctaw Nation who was placed with foster parents on or about March 1, 1985. She has remained with those foster parents since that time. The foster parents and the paternal grandparents are seeking to adopt the child in this proceeding. The state court has ruled that it has concurrent jurisdiction over this matter with the tribal court, but has made no determination as to who the adoptive parents should be. A hearing in the matter is scheduled for May 26, 1986.

Section 105(a) of the ICWA provides:

> In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

25 U.S.C. § 1915(a). The legislative history of section 105(a) of the ICWA indicates Congress' intent to "establish a federal policy that, where possible, an Indian child should remain in the Indian community" but not to preclude "the placement of an Indian child with a non-Indian family." H.R. Rep. No. 1386, 95th Cong., 2d Sess. 23 (1978).

The Bureau of Indian Affairs has issued guidelines interpreting the ICWA, including section 1915(a). Those guidelines specifically discuss what constitutes "good cause" to modify the preferences set forth in section 1915(a):

> F.3. Good Cause To Modify Preferences
>
> (a) For purposes of foster care, preadoptive or adoptive placement, a determination of good cause not to follow the order of preference set out above shall be based on one or more of the following considerations:
>
> (i) The request of the biological parents or the child when the child is of sufficient age.
>
> (ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness.
>
> (iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.
>
> (b) The burden of establishing the existence of good cause not to follow the order of preferences established in subsection (b) shall be on the party urging that the preference not be followed.

Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,583, 67,594 (Nov. 26, 1979). Nonetheless, as acknowledged in the introduction to the guidelines, this provision applying "good cause" to modify preferences, and the guidelines in general, are interpretative, not legislative, in nature, and not binding on the courts:

> Although the rulemaking procedures of the Administrative Procedure Act have been followed in developing these guidelines, they are not published as regulations because they are not intended to have binding legislative effect. . . . If procedures different from those recommended in these guidelines are adopted by a state, their adequacy to protect rights guaranteed by the Act will have to be judged on their own merits.

44 Fed. Reg. 67,584 (Nov. 26, 1979). The guideline on "good cause" is clearly interpretative because the ICWA does not expressly

delegate to the Secretary the responsibility to interpret the statutory language of section 105. As acknowledged by the introduction to the guidelines, "[p]rimary responsibility for interpreting . . . language in the Act [which does not lie with the Department] rests with the courts that decide Indian child custody cases." Id.

Because the guidelines are merely interpretative and not legislative, we conclude that this case does not merit the amicus participation of the United States. The language of section 105(a) clearly leaves the state court with ample discretion to modify the preferences set forth there as long as "good cause" is shown. The Department's guidelines on "good cause" are not binding on the court and therefore provide no legal basis for us to argue that awarding custody to the foster parents is incorrect as a matter of law. The legislative history of the ICWA expressly provides that "placement of an Indian child with a non-Indian family" is not precluded by section 105(a). H.R. Rep. No. 1386, 95th Cong., 2d Sess. 23 (1978). Moreover, the state court has recognized that the ICWA applies to this child and we have no reason to believe it will ignore the Act when it makes its adoption determination. Finally, we fail to recognize a significant federal interest that would be implicated by the state court's adoption determination in this case.

Please be advised that our decision at this time does not rule out federal amicus participation at the appellate level should a strictly legal issue arise as a result of the trial court's determination. I appreciate your bringing this matter to our attention.

Sincerely,

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Office of Assistant Secretary
Washington DC 20201

STATEMENT OF
BETTY J. STEWART, ACSW
ASSOCIATE COMMISSIONER
FOR THE CHILDREN'S BUREAU
BEFORE
SELECT COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
NOVEMBER 10, 1987

Mr. Chairman, Members of the Committee:

I am pleased to appear here today to discuss implementation of the Indian Child Welfare Act and how the Department of Health and Human Services has coordinated activities with the Bureau of Indian Affairs (BIA) to assist in achieving the goals of the Act. I am here representing the Children's Bureau which is located in the Administration for Children, Youth and Families, (ACYF) in the Office of Human Development Services (HDS) in the Department of Health and Human Services (HHS). The Children's Bureau administers the Child Welfare Services program under title IV-B of the Social Security Act and has a longstanding interest in child welfare services for Indian children and their families.

The Indian Child Welfare Act of 1978 is the expression of this Nation's policy to protect the best interests of Indian children and to promote the stability and security of Indian families. It established standards governing the removal of Indian children from their families, encouraged the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture, and held that no adoption of Indian children would be legal unless a Tribal Court concurs. We fully support the law's emphasis on Tribal jurisdiction over Indian child welfare matters and these efforts to preserve the child's cultural heritage.

OUR SUPPORT FOR THE ACT AND ITS GOALS HAS BEEN DEMONSTRATED IN A NUMBER OF WAYS. MOST NOTABLY, WE HAVE FACILITATED AGREEMENTS BETWEEN STATES AND INDIAN TRIBES AND HAVE UNDERTAKEN SEVERAL JOINT PROJECTS WITH THE BUREAU OF INDIAN AFFAIRS. IN ADDITION, WE HAVE USED HDS DISCRETIONARY GRANT FUNDS TO PROVIDE SEED MONEY AND TRAINING FOR INDIANS WORKING IN THE CHILD WELFARE FIELD. THESE CONTRIBUTIONS, IN TURN, ARE PERHAPS BEST SEEN IN THE CONTEXT OF THE LARGER ROLE THAT THE CHILDREN'S BUREAU PLAYS IN PROVIDING SERVICES TO ALL CHILDREN.

CHILD WELFARE SERVICES - TITLE IV-B OF THE SOCIAL SECURITY ACT

MANY OF THE PRINCIPLES OF THE INDIAN CHILD WELFARE ACT ARE SIMILAR TO THE REQUIREMENTS OF THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980 (P.L. 96-272). THIS LANDMARK LEGISLATION ESTABLISHED A NEW FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT AND MODIFIED THE TITLE IV-B CHILD WELFARE SERVICES PROGRAM TO IMPROVE PROTECTIONS AND SERVICES FOR CHILDREN.

THE GOALS OF P.L. 96-272 AND THE GOALS OF THE DEPARTMENT IN ADMINISTERING THIS LEGISLATION ARE:

- PREVENTION OF UNNECESSARY SEPARATION OF THE CHILD FROM THE PARENTS;

- IMPROVED QUALITY OF CARE AND SERVICES TO CHILDREN AND THEIR FAMILIES, AND

- PERMANENT HOMES FOR CHILDREN THROUGH REUNIFICATION WITH THEIR PARENTS OR THROUGH ADOPTION.

OUR PHILOSOPHY IS THAT, IF POSSIBLE, ALL CHILDREN SHOULD STAY WITH THEIR PARENTS; IF THEY ARE ALREADY IN FOSTER CARE, THEY SHOULD RE REUNITED WITH THEIR PARENTS; IF CHILDREN CANNOT STAY WITH OR BE RETURNED TO THEIR PARENTS, THEY SHOULD BE ADOPTED. THEREFORE, IN RECENT YEARS, WE HAVE PUT MAJOR EMPHASIS ON THE PROVISION OF FAMILY-BASED SERVICES TO PREVENT FOSTER CARE, PROMPT REUNIFICATION OF CHILDREN WHO ARE IN FOSTER CARE, AND THE ADOPTION OF CHILDREN WITH SPECIAL NEEDS.

UNDER P.L. 96-272 THE SECRETARY OF HEALTH AND HUMAN SERVICES MAKES GRANTS TO STATES FOR CHILD WELFARE SERVICES AND MAY PROVIDE DIRECT FUNDING FOR CHILD WELFARE SERVICES TO INDIAN TRIBES. TRIBAL GRANTS WERE FIRST AWARDED IN 1983. IN 1987, 35 INDIAN TRIBAL ORGANIZATIONS RECEIVED GRANTS TOTALLING $432,679 UNDER SECTION 428 OF THE SOCIAL SECURITY ACT.

TO BE ELIGIBLE FOR FUNDING, A FEDERALLY RECOGNIZED TRIBE MUST BE DELIVERING CHILD WELFARE SERVICES UNDER AN INDIAN SELF-DETERMINATION ACT CONTRACT WITH THE BIA AND MUST DEVELOP A CHILD WELFARE SERVICES PLAN THROUGH JOINT PLANNING WITH HDS/CB STAFF. JOINT PLANNING, WHICH IS REQUIRED BY THE LAW, MEANS TRIBAL AND FEDERAL REVIEW AND ANALYSIS OF THE TRIBE'S CURRENT CHILD WELFARE SERVICES PROGRAM, ANALYSIS OF THE SERVICE NEEDS OF CHILDREN AND THEIR FAMILIES, IDENTIFICATION OF UNMET SERVICE NEEDS TO BE ADDRESSED IN A PLAN FOR PROGRAM IMPROVEMENT, AND DEVELOPMENT OF GOALS AND OBJECTIVES TO ACHIEVE THOSE IMPROVEMENTS. ACYF REGIONAL OFFICE STAFF HAVE MET ON AN ANNUAL BASIS WITH INDIAN TRIBES TO CARRY OUT JOINT PLANNING.

WE BELIEVE THAT THE PLANNING EFFORT IS A WORTHWHILE UNDERTAKING BECAUSE IT GIVES THE TRIBES THE LEADERSHIP ROLE IN ASSESSING THEIR NEEDS AND DEVELOPING SUITABLE RESOURCES. WITH THE TRIBE'S CONCURRENCE JOINT PLANNING ALSO OFFERS THE OPPORTUNITY TO INCLUDE BOTH THE STATE AND THE BIA IN THE PLANNING PROCESS AND PROVIDES A FRAMEWORK FOR COOPERATIVE AGREEMENTS CONCERNING THE PROVISION OF THESE SERVICES.

TRIBAL-STATE AGREEMENTS

THE PROVISION OF SERVICES TO INDIAN CHILDREN AND FAMILIES, PARTICULARLY CHILDREN AND FAMILIES ON RESERVATIONS, VARIES DEPENDING ON RELATIONSHIPS BETWEEN THE TRIBES AND THE STATE. IN SOME STATES, THERE ARE EXCELLENT WORKING RELATIONSHIPS WITH JOINT PLANNING AND INDIAN TRIBAL INVOLVEMENT IN FUNDING DECISIONS. IN OTHER STATES, HOWEVER, TRIBAL-STATE RELATIONS TEND TO BE PROBLEMATIC. THE PROBLEM OF DIVIDED OR UNCERTAIN LEGAL JURISDICTION AND RESPONSIBILITY FOR INTERVENTION AND PROVISION OF SERVICES HAS LONG BEEN RECOGNIZED. ONE SOLUTION PROPOSED HAS BEEN THE DEVELOPMENT OF TRIBAL-STATE AGREEMENTS ON INDIAN CHILD WELFARE ISSUES SPELLING OUT STATE AND TRIBAL RESPONSIBILITY FOR ACTION AND FUNDING.

PAST AGREEMENTS WERE SUPPORTED BY BOTH ACYF AND THE ADMINISTRATION FOR NATIVE AMERICANS (ANA) BUT TENDED TO BE NARROW IN SCOPE -- FOR INSTANCE, AN AGREEMENT THAT THE STATE WOULD CONTRACT WITH THE TRIBE TO DEVELOP AND MAINTAIN NATIVE AMERICAN FOSTER HOMES ON THE RESERVATION. A STATE COULD HAVE A DIFFERENT AGREEMENT WITH EACH OF THE TRIBES IN THE STATE.

RECENTLY HOWEVER, THE AMERICAN ASSOCIATION OF INDIAN AFFAIRS HAS WORKED WITH THE STATE OF WASHINGTON AND AN ASSOCIATION OF WASHINGTON TRIBES TO DEVELOP A COMPREHENSIVE AGREEMENT, COVERING ALL ASPECTS OF INDIAN CHILD WELFARE AND DEFINING RESPONSIBILITIES AND PROCEDURES IN ALL CIRCUMSTANCES. THIS AGREEMENT HAS NOW BEEN SIGNED BY THE STATE AND ALMOST ALL OF THE 26 WASHINGTON TRIBES. THIS WINTER, ACYF WILL SPONSOR A MEETING WITH REPRESENTATIVES FROM THE AMERICAN ASSOCIATION OF INDIAN AFFAIRS, THE STATE OF WASHINGTON INDIAN DESK, AND THE TRIBAL ASSOCIATION TO PRESENT INFORMATION ON THE DEVELOPMENT AND IMPLEMENTATION OF THIS AGREEMENT. THE MEETING WILL BRING TOGETHER ANA, ACYF, BIA, CONGRESSIONAL STAFF AND NATIVE AMERICAN ORGANIZATIONS. IT IS HOPED THAT THIS AGREEMENT WILL SERVE AS A MODEL FOR OTHER STATES AND TRIBAL ASSOCIATIONS.

JOINT STUDY

IN A NUMBER OF OTHER INDIAN CHILD WELFARE AREAS HDS AND BIA HAVE ENGAGED IN COLLABORATIVE EFFORTS TO IMPROVE SERVICES TO INDIAN CHILDREN. FOR EXAMPLE, IN SEPTEMBER 1985, ACYF AND BIA JOINTLY CONTRACTED FOR A STUDY OF THE PREVALENCE OF INDIAN CHILDREN IN SUBSTITUTE OR FOSTER CARE. THE STUDY ALSO EXAMINED THE IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT AND RELEVANT PORTIONS OF P.L. 96-272 AS THEY AFFECT INDIAN CHILDREN AND FAMILIES. THIS IS THE FIRST SYSTEMATIC NATIONAL EXAMINATION OF THE EFFECTS OF THE INDIAN CHILD WELFARE ACT.

THE PURPOSE OF THE STUDY WAS TO DETERMINE THE NUMBER OF INDIAN CHILDREN IN SUBSTITUTE OR FOSTER CARE ACROSS THE COUNTRY AND TO OBTAIN DATA ABOUT THEIR PLACEMENTS AND CASE GOALS. THE STUDY WAS ALSO DESIGNED TO LEARN HOW STATES, TRIBES AND BIA AGENCIES ARE WORKING TOGETHER IN AN EFFORT TO COMPLY WITH THE LEGISLATION, AND TO DETERMINE WHAT SUCCESSES AND PROBLEMS ARE AFFECTING ITS IMPLEMENTATION.

DATA COLLECTION FOR THE STUDY WAS RECENTLY COMPLETED. A HIGH RETURN RATE FOR THE SURVEY WAS ACHIEVED. PRELIMINARY FINDINGS INDICATE THERE WERE APPROXIMATELY 9,123 INDIAN CHILDREN IN SUBSTITUTE CARE IN 1986. THE FINAL STUDY REPORT IS EXPECTED TO BE AVAILABLE BY JANUARY 1988.

OTHER EXAMPLES OF COLLABORATIVE EFFORTS BETWEEN ACYF AND BIA INCLUDE

- BIA PARTICIPATES IN TWO ACYF ADVISORY BOARDS WHICH ARE APPOINTED BY THE SECRETARY OF HHS: THE NATIONAL ADVISORY BOARD ON CHILD ABUSE AND NEGLECT AND THE ADVISORY COMMITTEE ON FOSTER CARE AND ADOPTION INFORMATION.

- BIA STAFF HAVE BEEN DETAILED TO HDS TO WORK ON INDIAN CHILD WELFARE ISSUES.

- For several years, BIA staff have served on HDS grant review panels and HDS staff have served on BIA grant review panels in the area of Indian child welfare services.

- The Children's Bureau participated as a member of the BIA Task Force on Child Abuse and Neglect which advised BIA in its development and implementation of local Child Protection Teams.

One outcome of this interagency collaboration has been a formal interagency agreement under which HHS transferred $200,000 of FY 1987 child abuse prevention funds to the BIA to be used on two reservations with special problems of child sexual abuse.

Discretionary Grant Program

From 1985 to 1987, HDS has funded approximately 66 discretionary grants totalling over $4 million to address a wide variety of Indian child welfre issues. Some projects were focused on developing cooperation between States and Indian Tribes on child welfare issues. Other projects were focused on prevention of out-of-home placements and improving child protective services on

INDIAN RESERVATIONS. OTHER GRANTS PROVIDE TRAINING FOR INDIAN STUDENTS INTERESTED IN WORKING IN CHILD WELFARE SERVICES AND FOR INDIAN PRACTITIONERS ALREADY WORKING IN THE AREA. STILL OTHER PROJECTS WERE DESIGNED TO HELP RESOLVE PROBLEMS WITH CHEMICAL DEPENDENCY, SCHOOL DROP-OUTS, AND RUNAWAYS.

THESE HDS DISCRETIONARY GRANTS, IT MUST BE EMPHASIZED, ARE FOR DEVELOPMENTAL PURPOSES ONLY. GRANTS MADE BY BIA UNDER THE INDIAN CHILD WELFARE ACT ARE DESIGNED TO FUND DIRECT SERVICE DELIVERY. THE DISCRETIONARY GRANTS MADE BY HDS COMPLEMENT BIA EFFORTS BY PROVIDING SEED MONEY FOR FUTURE IMPROVEMENTS IN SERVICES.

IN CLOSING, THE DEPARTMENT ACTIVELY SUPPORTS THE INDIAN CHILD WELFARE ACT AND THE PRINCIPLES IT EMBODIES REGARDING THE PREVENTION OF FAMILY SEPARATION; THE PROMOTION OF FAMILY REUNIFICATION; AND THE CENTRAL ROLE OF INDIAN TRIBES IN DECIDING THESE ISSUES.

ALTHOUGH WE HAVE NOT YET COMPLETED OUR ANALYSIS OF THE DRAFT BILL PROPOSED BY THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, WE APPRECIATE THE OPPORTUNITY TO COMMENT ON DRAFT LEGISLATION AFFECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED REMARKS AND NOW I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THAT YOU OR OTHER MEMBERS OF THE COMMITTEE MAY HAVE.

STATEMENT OF MICHELLE PENOZIEQUAH AGUILAR, EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF INDIAN AFFAIRS, STATE OF WASHINGTON.

Honorable Senators and staff of the Select Committee; thank you for allowing me to testify. My name is Michelle Penoziequah Aguilar. I am the Executive Director of the Governor's Office of Indian Affairs for the State of Washington. I also serve as a board member of the Indian Child Welfare Advisory Committee for the Affiliated Tribes of Northwest Indians and as a founding board member of Northwest Indian Child Welfare Association. My academic background is in human services and public administration. Prior to my current position I served as the Indian Child Welfare Program Director for The Suquamish Tribe. This is the second Indian Child Welfare oversight hearing at which I have testified.

As with any legislation, through the implementation process, areas of unclear language, jurisdiction, procedural difficulties, and misinterpretation of intent are discovered. Over the years some of the problems in the act have become tremendous barriers to implementation and operation of child welfare services both by tribal and state programs. These barriers and misunderstandings as to the intent of certain passages in the legislation has in some cases prevented a cooperative mode of operation and service provision between the state and the tribes. This in turn has hurt children and families.

Approximately four years ago tribal social workers in this state got together to discuss their frustration in trying to overcome these barriers and provide appropriate Indian child welfare services as intended by the act. After approximately one year a draft tribal/state agreement had been developed that could be presented to the state for negotiation between the governments. This draft agreement outlined the problems that existed on both the federal level and the state level and offered procedural solutions to the difficulties in service provision for all parties. Involved in the two and one half year negotiation process were representatives from the Bureau of Indian Affairs, Washington State Indian tribes and their legal counsel (Assoc of Amer Ind Affairs), the Department of Social and Health Services (DSHS) Division of Children and Family Services, DSHS Office of Indian Affairs, DSHS Legislative and Community Relations, the state Attorney General's Office, and the Governor's Office of Indian Affairs. This agreement is considered to be the most comprehensive tribal/state agreement in the nation.

Jule Sugarman, Secretary, Department of Social and Health Services, said " This agreement represents a most significant and impressive partnership which I fully support. This agency is committed to the terms, conditions and obligations contained in the agreement."

This agreement will serve as a blueprint for the development of policy, local agreements, training, and other necessary activities to be undertaken jointly by the tribes and DSHS.

Among the principles and concepts mutually agreed upon are:

- DSHS recognizes the jurisdiction of tribal governments over Indian child welfare matters.
- DSHS will utilize the prevailing social and cultural standards of Indian tribes and will involve tribal social services in all phases of placement services to Indian children.
- DSHS agrees to purchase child welfare services and social services by contract from tribes.
- DSHS agrees to provide pertinent Indian child welfare training to its staff serving Indian children.
- DSHS will provide notice of all state court proceedings regarding Indian children to parents, Indian custodians, tribal representatives, Bureau of Indian Affairs, when necessary, and extended family members.
- DSHS will enter into agreements with tribes for the delivery of Child Protective Services on reservations.

The outcome of the negotiation process and the agreement is manyfold. It created a strong working relationship with the state and tribes, it created legislation that brought the state into compliance with the Act, it began a process to develop an Indian child welfare compliance audit cooperatively with the BIA, The Affiliated Tribes, and with the states of Oregon and Washington. It also made the involved state agencies very aware of the need for amendments to the act and for appropriate levels of non competitive funding for tribal Indian child welfare programs.

This state is doing everything it can under very tight financial constraints to assist the tribes in providing culturally sensitive services to their children and families through tribal programs. This assistance is very minimal. I am here to implore you to consider putting a priority on the development of a bill that would address the specific areas of the act that need amending. I've included a copy of the tribal/state agreement, concurrent jurisdiction and exclusive jurisdiction, as well as a copy of second substitute house bill number 480 (the legislation referred to earlier in this document). As you will notice when reading the agreement, it goes beyond the Act to meet what the state and tribes felt was the intent of the act. It was important to develop this agreement to meet the needs of Indian children and families that the act does not address or where intent was not clear. The state of Washington would be glad to comment on a bill and assist in any other way we could.

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STATEMENT ON BEHALF OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

DELIVERED BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

INDIAN CHILD WELFARE OVERSIGHT HEARING

November 10, 1987

DELIVERED BY:
JACK F. TROPE, STAFF ATTORNEY

PREPARED BY:
JACK F. TROPE, STAFF ATTORNEY AND
BERTRAM F. HIRSCH, SPECIAL COUNSEL TO THE ASSOCIATION

Mr. Chairman and Committee members. Thank you for inviting us to testify before this Committee. The Senate Select Committee on Indian Affairs has played a vital role in enacting legislation to protect Indian children and families. We are pleased to see that the Committee has a continuing interest in this important issue.

The Association on American Indian Affairs, Inc. (AAIA) is a national non-profit citizens' organization headquartered in New York City and dedicated to the preservation and enhancement of the rights and culture of American Indians and Alaska Natives. The policies of the Association are formulated by a Board of Directors, a majority of whom are Native Americans. The Association began its active involvement in Indian child welfare issues in 1967 and for many years was the only national organization active in confronting the crisis in Indian child welfare. AAIA studies were prominently mentioned in committee reports pertaining to the enactment of the Indian Child Welfare Act and, at the invitation of Congress, AAIA was closely involved in the preparation of the Act. We continue to work with tribes in implementing the Act including the negotiation of tribal-state agreements and legal assistance in contested cases.

This testimony is presented in support of legislation amending the Indian Child Welfare Act to strengthen and clarify the Act and legislation providing for direct federal funding to tribes from generally applicable Federal grant programs targeted to social services programs -- specifically the Title XX Social

Services Block Grant, Titles IV-B and IV-E of the Social Security Act and the Alcohol, Mental Health and Drug Abuse Block Grant.

The Indian Child Welfare Act was landmark legislation. The Act was a response to widespread evidence that abusive child welfare practices had caused thousands of Indian children to be wrongfully separated from their families, usually to be placed in non-Indian households or institutions. The essential role of tribes in ensuring the well-being of their children was a cornerstone of the Act.

The Act has provided vital protections to Indian children, families and tribes. It has formalized the authority and role of tribes in the Indian child welfare process. It has forced greater efforts and more painstaking analysis by agencies and courts before removing Indian children from their homes. It has provided procedural protections to families and tribes to prevent arbitrary removals of children. It has required recognition by agencies and courts alike that an Indian child has a vital interest in retaining a connection with his or her Indian heritage.

Nonetheless, our work in the field and continual contact with individuals involved in all levels of Indian child welfare has revealed to us that there are a number of obstacles which prevent Indian people from fully realizing the benefits of the Indian Child Welfare Act. Foremost among the obstacles to success has been the lack of adequate funding for tribal social services programs. These programs are best suited to provide services to Indian children and in the best position to ensure that all public and private agencies involved with the children comply with the Act. Adequately funded tribal programs -- for example those tribes that have received Title XX funding through a contract with the State -- have the capacity to provide services to Indian communities in an efficient and culturally sensitive manner. Yet the only resource available to many tribes is the inadequately funded and competitive ICWA Title II grant which has been arbitrarily and erratically administered by the Bureau of Indian Affairs.

Another obstacle to the full and effective implementation of the Indian Child Welfare Act has been the uneven implementation of the Act by state agencies and courts. Agencies and courts that are not sympathetic to the Act's goals have sometimes circumscribed or circumvented the Act. Strained and narrow readings of its provisions have limited the scope and protections of the Act far more than Congress intended. In addition, experience with the Act has revealed issues that were not considered in 1978 and which could beneficially be addressed legislatively.

After continually being confronted by these problems in our work, we commenced a process to develop legislative recommendations to rectify these problems. AAIA informally surveyed dozens of people by phone, held meetings and gave seminars on Indian child welfare -- leading to substantial contact with social workers, attorneys and others involved in

Indian child welfare. We carefully reviewed case law and publications relating to the Act and the transcripts of 1984 and 1986 Congressional oversight hearings. Based upon these contacts and analyses, we drafted legislative proposals and circulated them to many persons known to the Association throughout Indian country who have had a long time involvement in Indian child welfare. The attached bills incorporate comments made by those individuals to whom the proposals were sent.

The bills are currently structured as two separate bills, but they are interrelated and could be combined. One bill amends the Indian Child Welfare Act. The other proposes a long-term solution to the Indian social services funding problem by providing for tribal set-asides in a number of social services programs currently targeted toward states. Both bills recognize that the best, most culturally sensitive mechanism for protecting Indian families and children is a strengthened tribe -- one with adequate authority, input and resources to provide the types of services and oversight, and, where appropriate, advocacy that are needed by Indian children and families. Such an approach is consistent with the overriding principle of Indian self-determination which rightfully informs the actions of Congress in the field of Indian affairs.

The substance of the proposals can be summarized as follows:

The Indian Child Welfare Act Amendments of 1987

This proposal amends the Indian Child Welfare Act to clarify and expand the Act. The major goals of the amendments are as follows:

1. Clarify and expand coverage of the Act.
    - all children enrolled or eligible for enrollment are covered by the Act; previous living in an Indian environment is not a requirement of the Act
    - putative fathers need not take formal legal action to acknowledge paternity
    - expand the Act to provide coverage to Canadian Indian children for the purposes of notice, burdens of proof and placements, but not for purposes of jurisdiction
2. Increase tribal involvement and control
    - clarify transfer provisions by defining what constitutes good cause not to transfer
    - clarify that all tribes have exclusive jurisdiction over children domiciled or resident on the reservation
    - clarify that tribally-licensed foster care homes are eligible for Title IV-E foster care payments
    - expand requirements for involvement of tribal social services programs in any case where continued state involvement with an Indian child is expected, including a requirement that such services and other tribal resources be brought to bear before removal of a child, except in emergency circumstances
3. Keep families intact whenever possible

- requirement that tribal services be utilized (see above)
- appointed counsel for families in administrative proceedings
- testimony from culturally sensitive expert witnesses as a prerequisite to removal of a child
- additional safeguards to ensure that all consents to out-of-home placements are truly voluntary
- make explicit the requirement that the natural family receive notice if an adoptive placement fails

4. Placement of children who must be placed with the extended family, other tribal members or other Indian families whenever possible
   - make placement preferences mandatory, except for explicit instances where alternative placements would be permitted
   - extended family provided with greater rights to intervene in proceedings and to challenge prior placements not in accordance with placement preferences
5. Fairer and quicker proceedings
   - increased access to federal courts
   - requirement that proceedings be expedited
6. Compliance monitoring mechanisms
   - creation of area-based Indian child welfare committees

- requirement that private agencies be required to comply with the ICWA as a condition of continued licensure
- inclusion of ICWA compliance in Title XX audits of state programs

7. Improvement of Title II grant process
    - programs in accordance with tribal priorities
    - review by non-Federal employees chosen in consultation with tribes
8. Better recordkeeping and increased access to records

The Indian Social Services Assistance Act of 1987

This proposal provides for a tribal set-aside -- determined by a formula which takes into account the Indian population on or near the reservation (as modified to deal with the special circumstances in Oklahoma and Alaska) and poverty levels of the population -- in the following programs:

1. Title XX Social Services Block Grant
2. Title IV-B Child Welfare Services
3. Alcohol, Mental Health and Drug Abuse Block Grant

The proposal also provides Title IV-E funding for tribally-licensed foster homes.

Consolidation of programs and formation of tribal consortiums would be permitted.

At current funding levels, the formulas would dictate a tribal set-aside of approximately $30-40 million/year. An additional undetermined amount would be available for Title IV-E foster payments.

Thank you once again for inviting us to testify at this hearing. Attached as appendices are the full texts of AAIA's proposals, explanatory summaries and revenue estimates.

APPENDIX A

INDIAN CHILD WELFARE ACT AMENDMENTS OF 1987

[ ] - Deletions

___ - Additions

An Act to amend the Indian Child Welfare Act of 1978 and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I - INDIAN CHILD WELFARE ACT AMENDMENTS

SEC. 101. Section 4 of the Indian Child Welfare Act (25 U.S.C. 1903) is amended to read as follows--

"SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise--

(1) "child custody proceeding" shall mean and include--

(i) "foster care placement" which shall mean any administrative, adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, [removing] which may result in the placement of an Indian child [from its parent or Indian custodian for temporary placement] in a foster home or institution, group home or the home of a guardian or conservator [where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated];

(ii) "termination of parental rights" which shall mean any adjudicatory or dispositional action, including a voluntary proceeding under section 103 of this Act, which may result [resulting] in the termination of the parent-child relationship or the permanent removal of the child from the parent's custody;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any administrative, adjudicatory or dispositional action or any voluntary proceeding under section 103 of this Act, whether the placement is made by a state agency or by a private agency or individuals, which may result [resulting] in a final decree of adoption.

Such term or terms shall include the placement of Indian children from birth to the age of majority including Indian children born out of wedlock. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime. Such terms shall also not include a placement based [or] upon an award of custody [in a divorce proceeding] to one of the parents in any proceeding involving a custody contest between the parents. All other proceedings involving family members which meet this definition are covered by this Act.

(2) "domicile" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period;

[(2)] (3) "extended family member" shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who, by blood or marriage, is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

[(3)] (4) "Indian" means any person who is a member of an Indian tribe, [or who is an Alaska Native and a member of a Regional Corporation as defined in section 7] including an Alaska Native who is a member of any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), any person who is considered by an Indian tribe to be a part of its community, or, for purposes of sections 107, any person who is seeking to determine eligibility for tribal membership;

[(4)] (5) "Indian child" means any unmarried person who is under age eighteen and is [either] (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe [and is the biological child of a member of an Indian tribe] or (c) is considered by an Indian tribe to be part of its community. Any child who meets the criteria in clause (a) or (b) is covered by this Act regardless of whether the child has lived in Indian country, an Indian cultural environment or with an Indian parent;

[(5)] (6) "Indian child's tribe" means (a) the Indian tribe in which the Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. The tribe with the more significant contacts may designate as the Indian child's tribe another tribe in which the child is a member or eligible for membership with the consent of that tribe;

[(6)] (7) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or, to [who] whom temporary physical care, custody, and control has been voluntarily transferred by the parent of such child whether through the tribe, state or a private placement;

[(7)] (8) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

[(8)] (9) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688,689), as amended, those tribes, bands, nations or groups terminated since 1940, and for the purposes of sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111 and 112 of this Act, those tribes, bands, nations or other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof;

[(9)] (10) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include, except for the purposes of the notice provision of this Act, the unwed father where paternity has not been acknowledged or established under tribal law or custom or under State law. For the purposes of asserting parental rights under this Act or State law, paternity may be acknowledged or established at any time prior to final termination of such rights under this Act or State law. An unwed father who has openly proclaimed his paternity to the mother, extended family, community or tribe of the child or who has submitted a letter, statement or other document to the court, a party to the child custody proceeding or a representative of any public entity, including a child placement or adoption agency licensed by the state, shall be deemed to have acknowledged paternity for the purposes of this Act;

(11) "qualified expert witness" means (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices, or (b) a person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe, or (c) a professional person having substantial education and experience in the area of his or her specialty who has knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe;

[(10)] (12) "reservation" means Indian country as defined in section 1151 of Title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(13) "residence" shall be defined by the tribal law or custom of the Indian child's tribe, or in the absence of such law or custom, shall be defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature;

[(11)] (14) "Secretary" means the Secretary of the Interior; and

[(12)] (15) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

SEC. 102. Section 101 of the Indian Child Welfare Act (25 U.S.C. 1911) is amended to read as follows--

"SEC. 101 (a) Notwithstanding any other Federal law to the contrary, an [An] Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where [such jurisdiction is] concurrent jurisdiction over voluntary child custody proceedings may be otherwise vested in the State by existing Federal law or where jurisdiction is otherwise vested in a state, pursuant to an agreement entered into pursuant to section 109 of this Act. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court child custody proceeding [for the foster care placement of, or termination of parental rights to,] involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe or in proceedings involving children domiciled or residing on the reservation where a state has assumed jurisdiction pursuant to subsection (a) of this section, the court, in the absence of [good cause] an agreement entered into under section 109 of this Act to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent [an] an unrevoked objection by either parent determined to be consistent with the purposes of this Act, upon the petition or request, orally or in writing, of either parent or the Indian custodian or the Indian child's tribe, Provided that the court may deny such transfer of jurisdiction where the petitioner did not file the petition within a reasonable time after receiving notice of the hearing and the proceeding is at an advanced stage when the petition to transfer is filed or if the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses and that hardship cannot be mitigated by the tribal court, Provided further, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court child custody proceeding [for the foster care placement of, or termination of parental rights to,] involving an Indian child, the Indian custodian of the child, the biological parent of the child unless parental rights have been previously terminated and the Indian child's tribe shall have a right to intervene at any point in the proceeding. The Indian custodian, the biological parent, except as provided above, and the Indian child's tribe shall also have a right to intervene in any administrative or judicial proceeding under State law to review the foster care, preadoptive or adoptive placement of an Indian child. The Indian child's tribe may permit an Indian organization or other Indian tribe to intervene in its behalf.

(d) Whenever a non-tribal social services agency determines that an Indian child is in a dependent or other condition that could lead to a foster care placement, preadoptive placement or adoptive placement and which requires the continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribe within seven days of the determination. At this and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribe full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribe providing that the tribe shall maintain the data according to statutory provisions applicable to the data.

[(d)] (e) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. Differences in practice and procedure that do not affect the fundamental fairness of the proceeding shall not be cause to deny full faith and credit to a tribal judicial proceeding."

(f) Nothing in this section shall be construed to authorize a state to refuse to offer social services to Indians whether resident or domiciled on or off the reservation to the same extent that such State makes services available to all of its citizens.

SEC. 103. Section 102 of the Indian Child Welfare Act (25

U.S.C. 1912) is amended to read as follows--

"SEC. 102(a) In any involuntary child custody proceeding in a State court, where the court or the petitioner knows or has reason to know that an Indian child is involved, the party seeking the foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child, or which otherwise has initiated a child custody proceeding, shall notify the parent, [or] Indian custodian, if any, and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings, [and] of their right of intervention, and of their right to petition or request the court to transfer the case to tribal court. Whenever an Indian child is eligible for membership in more than one tribe, each such tribe shall receive notice of the pending proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined after reasonable inquiry of the parent, custodian and child, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No involuntary child custody [foster care placement or termination of parental rights] proceeding shall be held until at least [ten] fifteen days after receipt of notice by the parent or Indian custodian and the tribe or until at least thirty days after receipt of notice by the Secretary. Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding. Provided further, That any request for appointed counsel, pursuant to subsection (b), shall toll the running of applicable time periods until a determination is made as to the parent or Indian custodian's eligibility for representation, unless the party requesting appointment of counsel waives such tolling.

(b) In any case in which the court or, in the case of an administrative proceeding, the administrator of the state agency determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any [removal, placement, or termination] child custody proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court or state agency shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge or, where applicable, the administrator of the State agency, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13). The Secretary shall also pay the reasonable fees and expenses of qualified expert witnesses retained on behalf of an indigent parent or Indian custodian.

(c) Each party [to a foster care placement or termination of parental rights] in any child custody proceeding under State law involving an Indian child shall have the right to examine and copy all reports or other documents [filed with the court] upon which any testimony or decision with respect to such action may be based.

(d) Any party seeking to effect a foster care, preadoptive or adoptive placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts, including efforts to involve the Indian child's tribe, extended family and off-reservation Indian organizations, where applicable, have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. In any case involving a non-tribal social services agency, no foster care, preadoptive or adoptive placement proceeding shall be commenced until the requirements of section 101(d) of this Act have been satisfied.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the [continued] custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The clear and convincing evidence and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need for foster care, including the finding required by subsection (d) of this section.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the [continued] custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The beyond a reasonable doubt and qualified expert witnesses requirements shall apply to any and all findings which the court makes which are relevant to its determination as to the need to terminate parental rights, including the finding required by subsection (d) of this section.

(g) Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or non-conforming social behavior does not constitute clear and convincing evidence or evidence beyond a reasonable doubt that custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To meet the burden of proof, the evidence must show the direct causal relationship between particular conditions and the serious emotional or physical damage to the child that is likely to result.

(h) Notwithstanding any State law to the contrary, a judge may enter an order which will provide for continued contact between the child and his or her parents, extended family or tribe following the entry of an order of adoption."

SEC. 104. Section 103 of the Indian Child Welfare Act (25 U.S.C. 1913) is amended to read as follows--

"SEC. 103 (a) (1) Where any parent or Indian custodian voluntarily consents to a foster care placement, [or to] termination of parental rights, or adoption under state law, such consent shall not be valid unless executed in writing and recorded before a judge of [a court of competent jurisdiction] a tribal or State court and accompanied by the presiding judge's certificate that the terms and consequences of the consent and the relevant provisions of this Act were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that [either] the parent [or] and Indian custodian, if any, fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid. An Indian parent or custodian may not waive any of the provisions of this section.

(2) At least ten days prior to any State court proceeding to validate a voluntary consent, the consenting parent shall notify the Indian child's tribe and the non-consenting parent, if any, by registered mail, return receipt requested, of the pending proceeding, of their right to intervention, and of their right to petition or request the court to transfer the case to tribal court.

(3) Consent to a foster care placement, termination of parental rights, preadoptive placement or adoptive placement shall not be deemed abandonment of the child by the parent or Indian custodian.

(4) The Secretary of Health and Human Services shall take appropriate action to ensure that all Indian Health Service personnel and consenting parents served by the Indian Health Service are informed of and comply with the provisions of this section.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned immediately to the parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or preadoptive or adoptive placement of, an Indian child, the consent of the parent or Indian custodian may be withdrawn for any reason at any time prior to the entry of a final decree of [termination or] adoption, [as the case may be,] and the child shall be immediately returned to the parent or Indian custodian unless returning the child to his or her parent or custodian would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm. The pendency of an involuntary child custody proceeding shall not be grounds to refuse to return the child to the parent or Indian custodian.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding based upon a preponderance of the evidence that such consent was obtained through fraud or duress, the court shall vacate such decree of adoption and return the child to the parent. Unless otherwise permitted under State law, no [No] adoption [which has been effective for at least two years] may be invalidated under the provisions of this subsection unless the parent or Indian custodian has petitioned the court within two years of the entry of a final decree of adoption [otherwise permitted under State law]."

SEC. 105. Section 104 of the Indian Child Welfare Act (25 U.S.C. 1914) is amended to read as follows--

"SEC. 104. (a) Any Indian child who is the subject of any action for foster care, preadoptive or adoptive placement or termination of parental rights under state law, any parent, [or] any Indian custodian from whose custody such child was removed and the Indian child's tribe may petition any court with [of competent] jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, [and] 103, 105 and 106 of this Act. The petition may include a demand that any subsequent child custody proceeding involving the same child be invalidated due to the violations which occurred in the earlier proceeding. Any member of the Indian child's extended family may intervene in a proceeding brought under this section and may independently petition any federal, state or tribal court with jurisdiction to invalidate such action upon a showing that such action violated any provision of section 105 of this Act. Such a petition may be filed at any time, but not more than two years following the entry of a final decree of adoption.

(b) Notwithstanding any law to the contrary, a federal court shall have jurisdiction for the purposes of this section. A federal court shall also have habeas corpus jurisdiction over Indian child custody proceedings.

(c) Upon the request of any party to the proceeding, the court shall hear any petition under this section or any appeal from a decision terminating the parental rights of a parent or Indian custodian on an expedited basis."

SEC. 106. Section 105 of the Indian Child Welfare Act (25 U.S.C. 1915) is amended to read as follows--

"SEC. 105. (a) Except as provided in sections (c) and (d) below, [In] any adoptive placement of an Indian child under State law[, a preference] shall be [given, in the absence of good cause to the contrary, to a placement] made in accordance with the following order of placement -- (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed (1) in the least restrictive setting which most approximates a family and [in which his special needs, if any, may be met. The child shall also be placed] (2) within reasonable proximity to his or her home[, taking into account any special needs of the child]. Except as provided in subsections (c) and (d) below, [In] any foster care or preadoptive placement, [, a preference] shall be [given, in the absence of good cause to the contrary, to a placement] made in accordance with the following order of placement --

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) The order of placement established under subsection (a) or (b) of this section shall not apply to the placement of an Indian child where (1) the child is of sufficient age and maturity and requests a different placement; (2) the child has extraordinary physical or emotional needs, as established by the testimony of expert witnesses, that cannot be met through a placement within the order of placement; (3) there is clear and convincing evidence, including testimony of qualified expert witnesses, that placement within the order of placement is likely to result in serious emotional or physical damage to the child; or (4) suitable families within such order of placement are unavailable after a diligent search has been completed, as provided for in subsections (f) and (g), for a family within the order of placement.

(d) [(c)] In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of [preference] placement by resolution, the agency or court effecting the placement shall follow such order so long as, in the case of a foster care or preadoptive placement, the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. [Where appropriate] Whenever the placement would be within one of the placement categories (or one of the exceptions in subsection (c) apply), the preference of the Indian child or parent and a request that the parent's identity remain confidential shall be considered: Provided, That the [where a] consenting [parent] parent's [evidences a] desire for anonymity shall not be grounds to fail to give notice to the Indian child's tribe or a non-consenting parent[, the court or agency shall give weight to such desire in applying the preferences].

(e) [(d)] Notwithstanding any State law to the contrary, the

[The] standards to be applied in meeting the [preference] placement requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. If necessary to comply with this section, a State shall promulgate, in consultation with the affected tribes, separate state licensing standards for foster homes servicing Indian children and shall place Indian children in homes licensed or approved by the Indian child's tribe or an Indian organization.

(f) [(e)] A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made evidencing the efforts to comply with the order of [preference] placement specified in this section. Such efforts must include, at a minimum, contacting the tribe prior to placement to determine if it can identity placements within the order of placement, notice to all extended family members that can be located through reasonable inquiry of the parent, custodian, child and Indian child's tribe, a search of all county or state listings of available Indian homes and contact with local Indian organizations and nationally known Indian programs with available placement resources. [Such] The record of the State's compliance efforts shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 107. Section 106 of the Indian Child Welfare Act (25 U.S.C. 1916) is amended to read as follows--

"SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive [parents voluntarily consent to the termination of their] parent's parental rights to the child have been terminated, the public or private agency or individual seeking to place the child, in accordance with the provisions of section 102(a), shall notify the biological parents, prior Indian custodians and the Indian child's tribe of the pending placement proceedings, their right of intervention, their right to petition for a transfer of jurisdiction to the tribal court and the parent's or Indian custodian's right to petition for return of custody. [a biological parent or prior Indian custodian may petition for return of custody and the] The court shall grant [such] the petition for return of custody of the parent or Indian custodian, as the case may be, unless there is a showing, in a proceeding subject to [the provisions] subsections (e) and (f) of section 102 of this Act, that such return of custody is not in the best interests of the child. Whenever an Indian child who has been adopted is later placed in foster care, the Indian child's tribe shall be notified and have the right to intervene in the proceeding.

(b) In the event that the court finds that the child should not be returned to the biological parents or prior Indian custodian, placement shall be made in accordance with the order of placement in section 1915. For the purposes of this section, extended family shall include the extended family of the biological parents or prior Indian custodian.

(c) [(b)] Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, or when a review of any such placement is scheduled, such placement shall be in accordance with the provisions of this Act, including prior notice to the child's biological parents and prior Indian custodian, provided that their parental rights have not been terminated, and the Indian child's tribe, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed."

SEC. 108. Section 107 of the Indian Child Welfare Act (25 U.S.C. 1917) is amended to read as follows--

"SEC. 107. Upon application by an adopted Indian individual who has reached the age of eighteen [and who was the subject of an adoptive placement], the Indian child's tribe or the Indian child's adoptive parents, the court which entered the final decree, through court records or records subject to court order, shall inform such individual of the names and tribal affiliation, if any, of the individual's biological parents and grandparents, if necessary, and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship."

SEC. 109. Section 108 of the Indian Child Welfare Act (25 U.S.C. 1918) is amended to read as follows--

"SEC. 108. (a) Any Indian tribe which became subject to State concurrent jurisdiction over voluntary child custody proceedings pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73,78), or pursuant to any other Federal law, may reassume exclusive jurisdiction over all voluntary child custody proceedings. Before any Indian tribe may reassume exclusive jurisdiction over voluntary Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogenous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographical area.

(2) In those cases where the Secretary determines that full jurisdiction [the jurisdictional provisions of section 101(a) of this Act are] is not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise (referral) exclusive jurisdiction [as provided in section 101(a)] over voluntary placements in limited community or geographical areas without regard for the reservation status.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume exclusive jurisdiction over all voluntary placements of children residing or domiciled on the reservation sixty days after publication in the Federal Register of notice of approval.

(d) Assumption of jurisdiction under this section shall affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act or as otherwise provided in the notice of the Secretary.

SEC. 110. Section 110 of the Indian Child Welfare Act (25 U.S.C. 1920) is amended to read as follows--

"SEC. 110. (a) Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(b) In any instance where a child has been improperly removed or improperly retained by any individual or entity, the parent or Indian custodian from whose custody the child was removed may petition any federal, state or tribal court with jurisdiction for return of the child in accordance with this section. Notwithstanding any law to the contrary, a federal court shall have jurisdiction for the purposes of this section.

SEC. 111. Section 112 of the Indian Child Welfare Act (25 U.S.C. 1922) is amended to read as follows--

" SEC. 112. (a) Regardless of whether a child is subject to the exclusive jurisdiction of an Indian tribe, nothing [Nothing] in this title shall be construed to prevent the emergency removal of an Indian child who is [a resident of or is domiciled on a reservation, but temporarily] located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. [and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.] Wherever possible, the child shall be placed within the order of placement provided for in section 105 of this Act.

(b) No later than the time permitted by state law, and in no event later than three days (excluding Saturday, Sunday and legal holidays) following the emergency removal, the state authority, agency or official must obtain a court order authorizing continued emergency physical custody. If the Indian child has not been restored to its parent or Indian custodian within 10 days following the emergency removal, the state authority, agency or official, in the absence of an agreement pursuant to section 109 to the contrary, shall (1) commence a state court proceeding for foster care placement if the child is not resident or domiciled on an Indian reservation and is not a ward of the tribal court, or (2) transfer the child to the jurisdiction of the appropriate Indian tribe if the child is resident or domiciled on an Indian reservation or a ward of the tribal court. Notwithstanding the filing of a petition for a foster care placement of the child, the State agency, authority or official shall continue active efforts to prevent the continued out-of-home placement of the child. No emergency custody order shall remain in force or in effect for more than thirty (30) days without a determination by the appropriate court, in accordance with section 102(e) of this Act in the case of a State court, that foster care placement of the child is appropriate, Provided that in any case where the time requirements in section 102(a) do not permit a child custody proceeding to be held within 30 days, the emergency custody order may remain in force for a period not to exceed three days after the first possible date on which the proceeding may be held pursuant to section 102(a).

SEC. 112. Title I of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

"SEC. 124 (a) The Secretary shall establish Indian Child Welfare committees consisting of not less than three persons for each area office. The committees shall monitor compliance with this Act on an on-going basis. Appointments to the committees shall be made for a period of three years and shall be chosen from a list of nominees furnished, from time to time, by Indian tribes and organizations. Each committee shall be broadly representative of the diverse tribes located in its area.

(b) In licensing any private child placement agency, any state in which either (1) a Federally-recognized Indian tribe is located or (2) there is an Indian population of more than

10,000, shall include compliance with this Act by the private agency as a condition of continued licensure and shall annually audit such agencies to ensure that they are in compliance. The audit report shall be made available upon the request of the Secretary or any tribe.

SEC. 113. Section 201 of the Indian Child Welfare Act (25 U.S.C. 1931) is amended to read as follows--

"SEC. 201. (a) The Secretary shall [is authorized to] make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs, in accordance with priorities established by the tribe, may include, but are not limited to--

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the

temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, cultural and family-enriching activities and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) Guidance, legal representation, and advice to Indian families and tribes involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under title IV-B and XX of the Social Security Act or any other federally assisted program. [For purposes of qualifying for assistance under a federally assisted program, licensing or approval of] Placements in foster or adoptive homes or institutions licensed or approved by an Indian tribe, whether the homes are located on or off of the reservation, shall qualify for assistance under federally assisted programs, including the foster care and adoption assistance program provided for in title IV-E of the Social Security Act (42 U.S.C. 670 et seq.) [be deemed equivalent to licensing or approval by a State].

(c) In lieu of the requirements of subsections 10, 14 and 16 of section 471 of the Social Security Act (42 U.S.C. 671 (10), (14) and (16)), Indian tribes may develop their own systems for foster care licensing, development of case plans and case plan reviews consistent with tribal standards, so long as such systems are not contrary to the requirements of this Act.

(d) In determining eligibility for grants awarded pursuant to this section, the review process must utilize individuals selected in consultation with tribes and Indian organizations, who are not Federal employees and who have knowledge of Indian child welfare. Tribes in all areas of the country shall be eligible for grants awarded pursuant to this section.

SEC. 114. Section 202 of the Indian Child Welfare Act (25 U.S.C. 1932) is amended to read as follows--

"SEC. 202. (a) The Secretary [is also authorized to] shall also make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which, in accordance with priorities set by the Indian organizations, may include, but are not limited to--

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and

services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families and Indian organizations involved in child custody proceedings.

(d) In determining eligibility for grants awarded pursuant to this section, the review process must utilize individuals selected in consultation with tribes and Indian organizations, who are not Federal employees and who have knowledge of Indian child welfare.

SEC. 115. Section 203 of the Indian Child Welfare Act (25 U.S.C. 1933) is amended to read as follows--

"SEC. 203. (a) In the establishm[illegible], operation and funding of Indian child and family service programs, both on and off reservation, the Secretary [may] shall enter into agreements with the Secretary of [Health, Education and Welfare] Health and Human Services, and the latter Secretary is hereby authorized and directed to use funds appropriated for similar programs of the Department of Health and Human Services for such purpose. [Health, Education and Welfare: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.]

(b) [Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.] Congress shall appropriate such sums as may be necessary to carry out the provisions and purposes of this Act. In addition, Congress may appropriate such sums as may be necessary to provide Indian child welfare training to Federal, state and tribal judges, court personnel, social workers and child welfare workers, including those employed by agencies licensed by a State.

(c) Indirect and administrative costs relating to a grant awarded pursuant to this Title shall be paid out of Indian Contract Support funds. One hundred per centum (100%) of the sums appropriated by Congress to carry out the provisions and purposes of this Act shall be awarded to tribes or Indian organizations."

SEC. 116. Section 301 of the Indian Child Welfare Act (25 U.S.C. 1951) is amended to read as follows--

"SEC. 301 (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary and the Indian child's tribe with a copy of such decree or order together with such other information as may be necessary to show--

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents;

(4) the identity of any agency having files or information relating to such adoptive placement.

No later than 120 days after enactment of this bill, the administrative body for each State court system shall designate an individual or individuals who will be responsible for ensuring State court compliance with this Act. All information required by this subsection relating to decrees of adoption entered after May 8, 1979 shall be compiled and forwarded to the Secretary and Indian child's tribe no later than January 1, 1989. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the

Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be held by the Secretary pursuant to subsection (a) of this section [necessary for the enrollment of an] Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership]. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting [anonymity] that their identity remain confidential and the affidavit has not been revoked, the Secretary shall [certify] provide to the Indian child's tribe[, where the] such information [warrants, that] about the child's parentage and other circumstances of birth as required by such tribe to determine [entitle] the [child] child's eligibility for [to enrollment] membership under the criteria established by such tribe,

(c) No later than January 15 of each year, the state social services agency shall compile and submit to the Secretary a list of all Indian children in foster care, preadoptive or adoptive placement as of December 31 of the previous year. The list shall include the name of the Indian child's tribe, the name and address, if known, of the child's biological parents and prior Indian custodian, if any, the names and addresses of the parties having legal and/or physical custody of the child and the current legal status of the child, biological parents and prior Indian custodian. Within 10 days of the submission of the list to the Secretary, the state shall provide to each tribe all information on the list pertaining to the children of such tribe.

TITLE II - SOCIAL SECURITY ACT AMENDMENTS

SEC. 201 Section 408(a) of Title IV of the Social Security Act (42 U.S.C. 608(a)) is amended --

(1) by striking out at the end of subsection (2) (A) the word "or"

(2) by adding after subsection (2) (B) the following clause "or (C) in the case of an Indian child, as defined by subsection 4(4) of the Indian Child Welfare Act (25 U.S.C. 1903(4)), the Indian child's tribe as defined in subsections 4(5) and (8) of that Act (25 U.S.C. 1903(5) and (8)),".

SEC. 202 Section 422 of Title IV of the Social Security Act (42 U.S.C. 622) is amended by adding after and below clause (8) the following new clause:

" (9) include a comprehensive plan, developed in consultation with all tribes within the State and in-state

Indian organizations (with social services programs), as defined by section 4(7) of the Indian Child Welfare Act (25 U.S.C. 1903(7), to ensure that the State fully complies with the provisions of the Indian Child Welfare Act."

SEC. 203 Section 471 of Title IV of the Social Security Act (42 U.S.C. 671) is amended by adding after and below clause (17) the following new clause:

"(18) provides for a comprehensive plan, developed in consultation with all tribes within the State and in-state Indian organizations (with social services programs), as defined by section 4(7) of the Indian Child Welfare Act (25 U.S.C. 1903(7), to ensure full compliance with the provisions of the Indian Child Welfare Act. As part of the plan, the State shall make active efforts to recruit and license Indian foster homes and, in accordance with section 201 of the Indian Child Welfare Act (25 U.S.C. 1931), provide for the placement of and reimbursement for Indian children in tribally licensed or approved facilities."

TITLE III - MISCELLANEOUS

SEC. 301. These amendments shall take effect 90 days after enactment.

SEC. 302. Within 45 days after enactment of these amendments, the Secretary shall send to the Governor, chief justice of the highest court of appeal, the Attorney General, and the director of the Social Service agency of each State and tribe a copy of these amendments, together with committee reports and an explanation of the amendments.

SEC. 303. If any of these amendments or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

APPENDIX B

SUMMARY OF THE INDIAN CHILD WELFARE AMENDMENTS OF 1987

TITLE I - INDIAN CHILD WELFARE ACT AMENDMENTS

SEC. 101 (amends Sec. 3 of ICWA [25 U.S.C. 1903])

(1) Amends the definition of child custody proceedings to include administrative and dispositional proceedings. Some states have separate administrative, adjudicatory and dispositional proceedings while other states combine one or more of these proceedings. See _In Re S.R._, 323 N.W.2d 885 (S.D. Sup Ct. 1982). The Act has been construed in some jurisdictions to cover adjudicatory proceedings involved in the custody of Indian children and not administrative and dispositional proceedings. The amendment clarifies that each of these proceedings are included within the coverage of the Act. The section is also amended to state explicitly that voluntary placements under section 103 are included within the definition of "child custody proceeding". Some courts have ruled that these types of proceedings are not covered by the Act and by so doing have effectively voided the validation provisions in that section. See _D.E.D. v. Alaska,_ 704 P.2d 774 (Alaska 1985); _In re Baby Boy L_, 643 P.2d 168 (Kan. 1981). See also _In re Adoption of K.L.R.F._, 515 A.2d 33 (Pa. Super. Ct. 1986) which pointed out the inconsistency

between this definition and the provisions in section 103 of the ICWA. In addition, the definition expressly includes "permanent removal of the child from the parent's custody" under the definition of "termination of parental rights" to address situations where children are placed in permanent custodial placements (e.g., guardianships) without a determination of parental fitness as required by the Act. Also, the revised definition expressly includes private adoptive placements to ensure that such placements are made in accordance with the placement priorities of the Act. Finally, the amendments specifically exclude custody disputes between both unmarried and married parents from the definition where custody is to be awarded to one of the parents; they include all other Indian children, and specifically include all other intrafamilial disputes. These amendments confirm In re S.B.R., 719 P.2d 154 (Wash. App. 1986) and In re Junious M, 193 Cal. Rptr. 40 (Cal. App. 1983) which held that the existence of a child custody proceeding and Indian child are sufficient to trigger the Act and overrule In re Baby Boy L, supra, Claymore v. Serr, 405 N.W.2d 650 (S.D. 1987) and similar cases which erroneously added the extra requirement that the child must also have lived in an Indian family. In addition, the amendments are designed to confirm A. B. M. v. M.H. & A. H., 651 P. 2d 1170 (Alaska 1982), cert. denied sub nom, Hunter v. Maxie, 461 U.S. 914 (1983) which ruled that the Act applies to intrafamilial disputes if not explicitly excluded and overrule In re Bertleson, 617 P.2d 121 (Mont. 1980). Lastly, the amendments overrule "Decision of the Commissioner of Indian Affairs In the Appeal of William Stanek, March 20, 1981 (Adoption of L.A.C. and F.J.C., No. 19724, Thurston County Court, Nebraska), 8 I.L.R. 5021 (1981) which held that the Act applies to custody disputes between unmarried parents.

(2) Defines "domicile" in accordance with tribal law, or, in the absence of tribal law, it is defined as that place where a person maintains a residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period. The "in the alternative" definition is taken from the United States compact with the Northern Mariana Islands approved by Congress. The definition recognizes the special circumstances of many Indian people on reservations who may leave the reservation for an extended period for the purposes of work or education but retain a domicile on the reservation during that period. See Wisconsin Potawatomies v. Houston, 393 F. Supp. 719 (N.D. Mich. 1973). The addition of this definition to the ICWA addresses a number of cases where trial courts have automatically applied state domicle law to the disadvantage of an Indian parent. See, e.g., Matter of Adoption of Halloway, 732 P.2d 962 (Utah 1986), Goclanney v. Desroches, 660 P.2d 491 (Ariz. Ct. App. 1982).

(3) Amends the definition of "extended family" to include all persons related to the child by blood or marriage. This addresses the not infrequent circumstance where a child may have developed a relationship with a stepgrandparent or other relative by marriage and placement with such relative would be appropriate.

(4) Amends the definition of "Indian" to include Alaska Natives born after the passage of ANCSA in 1971, clarifies that section 107 applies to persons who by definition cannot yet establish a right to tribal membership and includes any person recognized by an Indian tribe as part of its community. (See explanation in section (5).)

(5) Amends the definition of "Indian child" to include children considered to be part of the Indian community. The purpose of this amendment is to deal with children who are clearly Indian and live in Indian communities but who may not technically meet criteria for membership because of, for example, patrilineal or matrilineal tribal membership systems or insufficient blood quantum for membership in any one tribe because of connections with more than one tribe. A similar provision can be found in the Washington State Administrative Code, WAC 388-70-091(3). In addition, the definition is amended to make clear that a child who is member of a tribe or eligible for membership need not live with an Indian parent or in an Indian community to be covered

by this Act. This would reverse In Re Baby Boy L, supra, Johnson v. Howard, 12 ILR 5128 (Okla. Sup. Ct. 1985) and Claymore v. Serr, supra, and endorse the holdings in In re S. B. R., supra and In re Junious M., supra.

(6) Indian child's tribe is amended to allow the tribe with the most significant contact with the child to designate another tribe in which the child is a member or eligible for membership as the Indian child's tribe (with its consent). A variation of this provision is found in the Minnesota Indian Family Preservation Act, Minn. Stat. sec. 257.351(7).

(7) Amends "Indian custodian" to include all Indian persons to whom a parent has voluntarily transferred custody whether in accordance with state, federal or tribal law. This amendment addresses the case of State ex. rel. Multnomah County Juvenile Dept. v. England, 640 P.2d 608 (Or. 1982) which held that since the state retains legal custody of children it places in foster care, an Indian foster parent is not an Indian custodian even where the foster parent is a member of the child's extended family and the parent has consented to the placement.

(9) Includes terminated tribes in the definition of Indian tribe. Includes Canadian tribes in the definition of Indian tribe for the purposes of some sections of the Act, including the notice, intervention, voluntary consent and

placement sections, but not including the jurisdiction and grant provisions. This change recognizes the close cultural and familial relationship between Canadian and American tribes and the significant number of Canadian Indian children in the United States, but avoids problems of international law by excluding Canadian tribes from the jurisdiction clauses. The Washington Administrative Code contains a similar provision, WAC 388-70-091(2).

(10) Changes the definition of "parent" to clarify that paternity may be acknowledged or established at any time prior to final termination of the father's parental rights and that acknowledgement of paternity does not require a formal legal proceeding. This reverses court cases which have required formal acknowledgement proceedings to be held before the child custody proceeding is commenced in order for the father to have standing. See In re Baby Boy D, 12 ILR 5117 (Okla. Sup. Ct. 1985). In addition, the amendments provide that any person believed to be the unwed father is entitled to notice regardless of whether he has acknowledged or established paternity. See Stanley v. Illinois, 405 U.S. 645 (1972).

(11) Defines "qualified expert witness" to include persons recognized as knowledgeable by the Indian community and to require that all expert witnesses have at least some knowledge of the customs and childrearing practices of the

Indian child's tribe -- the degree of knowledge required is dependent upon the individual's level of training. This is a modified version of Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereinafter BIA Guidelines), 44 Fed. Reg. 67584 (1979), section D.4. The amendment endorses cases which have enforced such a requirement, see, e. g. State ex rel Juvenile Department of Multnomah County v. Charles, 688 P.2d 1354 (Or. Ct. App. 1984), app. dism. 701 P.2d 1052 (1985) and reverses cases which have held that expert witnesses are not required to have such knowledge. See, e. g., D.W.H. v. Cabinet for Human Resources, 706 S.W.2d 840 (Ky. Ct. App. 1986).

(13) Defines "residence" in accordance with tribal law, or, in the absence of tribal law, it is defined as a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The "in the alternative" definition is taken from the United States compact with the Marshall Islands and Micronesia approved by Congress. The definition recognizes the special circumstances of many Indian people on reservations who may leave the reservation for an extended period for the purposes of work or education but retain their true residence on the reservation during that period. See Wisconsin Potawatomies v. Houston, 393 F. Supp. 719 (N.D. Mich. 1973). See also explanation to the definition of domicile above.

SEC. 102 (amends Sec. 101 of ICWA [25 U.S.C. 1911])

(a) Makes clear that all tribes, including those in Public Law 280 states, have exclusive jurisdiction over involuntary child custody proceedings involving children residing or domiciled on the reservation. Notwithstanding Bryan v. Itasca County, 426 U.S. 373 (1976) and subsequent cases such as California v. Cabazon Band of Mission Indians, 107 S.Ct. 1083 (1987) which limited the scope of Public Law 280 over civil/regulatory matters, many 280 states and at least one court decision, Fawcett v. Fawcett, 13 I.L.R. 5063 (Alaska Super. Ct. 1986), have improperly construed Public Law 280 as extending jurisdiction over involuntary child custody proceedings to states. Moreover, in Native Village of Nenana v. Alaska Department of Health and Social Services, 722 P.2d 219 (Alaska 1986), cert. den. 107 S. Ct. 649 (1986), the court erroneously held that unless a tribe submitted a petition to resume jurisdiction pursuant to section 108 of the ICWA, it has no jurisdiction over child welfare proceedings. These amendments overturn these cases. The amendments recognize, however, that Public Law 280 may have conferred concurrent jurisdiction over voluntary proceedings to the states subject to that law. The amendments also explicitly permit a tribe to consent to the exercise of concurrent jurisdiction by the state by means of an agreement pursuant to section 109 of this Act in order to protect the children of those tribes who do not have the resources to administer their own system. Tribes are, of course, free to designate other tribes or to form consortiums to exercise jurisdiction on their behalf as an alternative to State jurisdiction.

(b) The amendments remove the good cause exception for failure to transfer a case involving a child resident and domiciled off reservation (or a child resident or domiciled on the reservation where the State has acquired concurrent jurisdiction pursuant to subsection (a)) and instead require transfer, absent a continuing parental objection consistent with the purposes of the Act, except in three instances: (1) where the proceeding is at an advanced stage and the tribe or parent has ignored timely notice, (2) where the transfer would cause undue hardship to the witnesses and the tribal court cannot mitigate the hardship and (3) when there is a tribal-state agreement to the contrary. This recognizes the original purpose of the "good cause" exception (a modified forum non conveniens notion), see *Matter of Appeal in Pima County,* 635 P.2d 187 (Ariz. Ct. App. 1981), cert. den. 455 U.S. 1007 (1982) and prevents state court abuse of the good cause exception, see, *e.g.*, *In re Bertleson*, *supra*, *In re Bird Head*, 308 N.W.2d 837 (Neb. 1983), *In re J.R.H.*, 358 N.W.2d 311 (Iowa 1985), *In re Adoption of K.L.R.F.*, *supra*, (Del Sole, J. conc. op.), *In the Matter of Adoption of T.R.M.*, 489 N.E.2d 156 (Ind. Ct. App. 1986) (Staton, P. J., dissent). It also reverses court cases (1) which have refused to allow a parent to withdraw an objection, (2) where an objection to transfer has been based solely upon a desire to break the child's bonds with the tribe and Indian family, see In re Baby Boy L, supra, and (3) where courts have ruled that they cannot transfer the case to tribal court where there is concurrent jurisdiction because the transfer provision of the ICWA only involves children who live off of the reservation. The amendments also make clear that a request to transfer may be made orally, as provided in the BIA guidelines, section C.1. Some courts have required full participation in the proceeding by the party requesting transfer before considering that request --an unnecessary and unduly burdensome requirement. See In re Bird Head, supra. Finally, this section is made applicable to all child custody proceedings to explicitly permit tribes to petition for transfer of preadoptive and adoption proceedings to tribal court.

(c) Amends this section to clarify that the right of intervention applies to all child custody proceedings and that all biological parents whose parental rights have not been terminated have the right to intervene. The amendments also extend the right of intervention to administrative or judicial proceedings to review the child's placement and allow a tribe to designate another tribe or Indian organization (with its consent) to act in its behalf to deal with situations where a child is away from the reservation of his or her tribe.

(d) Requires a state and local social services agency to notify the Indian child's tribe within seven days and to cooperate fully with the tribe whenever it determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and continued agency involvement with the child for 30 days or more. This provision is designed to better ensure that the provisions of the Act are enforced and recognizes the importance and benefits of tribal involvement in all stages of the process. Both the Minnesota Indian Family Preservation Act (Minn. Stat. sec. 257.352 (3)) and the Washington Tribal-State Agreement regarding child custody services and proceedings (hereinafter Washington Tribal-State Agreement) (Part III, Section 3) include a similar provision.

(e) Amends subsection 1911(d) to clarify that differences in practice and procedures that do not affect the fundamental fairness of a tribal court proceeding are not grounds to refuse to give full faith and credit to a tribal judicial proceeding. Under existing language, tribes sometimes encounter difficulty meeting state requirements for introduction of public records in state courts because tribal court procedures for certifying or authenticating documents do not comport with the technical requirements of state law.

(f) Adds a new subsection which makes clear that this section does not mean that a state can refuse to offer the same services to its Indian citizens as it does to all citizens. Some states have determined that they have no authority to provide services to on reservation Indians or to off reservation Indians who were the subject of a tribal court order, thereby depriving those individuals of the opportunity to voluntarily make use of available State services. This was not the intent of this section of the ICWA.

SEC. 103 (amends Sec. 102 of ICWA [25 U.S.C. 1912])

(a) Amends the notice requirements to make them applicable to all involuntary child custody proceedings, including adoptive and preadoptive placements. This amendment recognizes that without such a requirement there may not be any party to the proceeding in a position to ensure that placement priorities are followed by the court in the adoption context -- some cases in fact start at the adoption phase. Cf. Matter of J.R.S., 690 P.2d 10 (Alaska 1984). The amendments also clarify the required contents of the notice to make sure that all necessary information about the rights of all parties is included and specify necessary procedures for determining the Indian child's tribe and providing notice to all tribes in which an Indian child is eligible for membership (or to the tribe in which he or she is a member) prior to notifying the BIA. These clarifications are included because of the common practice in some states, for example, some counties in California, to simply provide notice to the BIA without a good faith effort to notify the appropriate tribe(s). The BIA often does not pass these notices on to the tribes nor does it take any other action. In addition, the amendments clarify that if there is both a parent and Indian custodian, both receive notice. At least one court has held that notice to the Indian custodian and not the parent was sufficient. Additionally, the amendments make explicit there is reason to know that the child is Indian when the petitioner has reason to know, not only when the court has reason to know. This change is consistent with and gives force to section B.1.c. of the BIA guidelines which provides, among other things, that the court has reason to believe that a child is Indian when (1) any party to the case informs the court, (2) any agency or officer of the court has information that the child may be Indian, or (3) the child lives in a predominantly Indian community. Some courts have been lax in implementing this provision. See, e. g., In the Matter of the Adoption of an Indian Child (Baby Larry), 217 N.J.Super. 28 (1987). The notice time limits in this section are also amended. The section as enacted allows a child custody proceeding to be held five days prior to the time within which the Secretary is authorized to provide notice to the parent, Indian custodian and the tribe. This is clearly a drafting error and these amendments would rectify this problem. Finally, the amendments provide for a tolling of the time limits, at the option of the parent or Indian custodian, if an application for counsel is pending. It is, of course, presumed that the Secretary will process such requests promptly so that there is no undue delay in the scheduling of the proceeding.

(b) Extends the right to counsel to administrative hearings. This will ensure that families are appointed counsel at all stages of proceedings which could have an effect on family unity. Also requires payment by the Secretary of reasonable expert witness fees. This is necessary if parents and Indian custodian are to be able to participate on an equal footing in child custody proceedings.

(c) Clarifies that the right to discover documents in a child custody proceeding includes access to the case record and all documents which serve as the basis for oral testimony. In some states, social workers have refused to release information to tribes on the ground that the information has not been "filed" with the court. This refusal is especially critical where a state worker files an abbreviated social summary with the court and does not file the worker's raw data file which provides information to the Indian tribe or Indian parent about the basis for the social worker's dispositional and case work decisions. The amendments also clarify that such documents may be copied by counsel. Some courts and agencies have narrowly construed this provision to permit examination and not copying.

(d) Expands upon the notion of reasonable efforts to indicate that in most cases such efforts must include the involvement at a minimum of the Indian tribe and extended family. The amendment is designed to make clear that, whenever possible, the resources of the tribal community are to be brought to bear before removal of the child, including the involvement of an Indian child and family service program, individual Indian care givers and the provision of culturally sensitive childrearing services. To strengthen this requirement, the amendments provide that no child custody proceeding may be commenced, except in emergency circumstances, unless the tribe has previously received notice of the dependent status of the child.

(e) Clarifies that the clear and convincing standard utilized in involuntary foster care proceedings applies to all findings that the court needs to make in order to place the child in foster care. Also, the amendments remove the word "continued" before the word "custody". See section f. below for explanation.

(f) Same as above in regard to the beyond a reasonable doubt standard required to terminate parental rights and the "continued custody" issue. This first cited provision would reverse the decisions of some courts which have applied a lesser standard to some of the elements required for the termination of parental rights. See In the Matter of J.R.B., 715 P.2d 1170 (Alaska 1986); In re T.J.J., 12 I.L.R. 5068 (Minn. Ct. App. 1985). Congress recognized in 1978 that permanent removal of a child is a penalty as severe as a criminal penalty --that stringent protections must be in place and that termination is a last resort to be applied only when the conditions threatening the child are likely to continue for a prolonged, indeterminate period. A stringent standard of proof is necessary as to all elements of proof required to ensure that termination is truly justified. As for the second change mentioned above, some courts have cited the continued custody clause to wrongfully deny the applicability of the Act where the child is not in the custody of the Indian parent at the time the proceeding is brought. See, e. g., Johnson v. Howard, supra.

(g) Clarifies that the existence of community or family poverty, crowded or inadequate housing, alcohol abuse or non-conforming social behavior is not grounds to remove the child from his or her home unless a direct causal relationship between these conditions and serious harm to the child can be demonstrated. This change brings into the statute section D.3. of the BIA guidelines.

(h) This section explicitly recognizes the customary system of adoption prevalent among Indian tribes, i.e., continued contact between the adopted child and his or her biological family (and tribe) after a final decree of adoption. In some cases where permanent out-of-home placement may be unavoidable, termination of parental rights and contact between the child and his or her family and tribe may not be the least restrictive nor best method to provide for the best interests of the child. Nonetheless, some state courts have no statutory authority to explore such options. This section would provide that authority.

SEC. 104 (amends Sec. 103 of ICWA [25 U.S.C. 1913])

(a) (1) Provides that consents must be validated regardless of the type of placement. Thus, all adoptive placements whether by state agency or a private agency or individual would require validation by the state court. Moreover, the section is amended to make sure that the relevant provisions of the Act, for example, placement preferences, the ten day restriction on consent, the right to legal counsel and the notice provisions, are explained to the parent and Indian custodian, if any. These changes are designed to ensure that all consents are truly informed and voluntary. Also, parents and Indian custodians are not permitted to waive the requirements of this section. Too often, private adoption agencies have continued to try to circumvent the Act by having the uninformed parent sign a blanket waiver of the Act. Additionally, the amendments make clear that both state and tribal courts may take consents in appropriate situations. Some state courts have not accepted tribal courts as courts of competent jurisdiction. The change clarifies that the tribal court's jurisdiction is the same in the voluntary context as in the involuntary context. Children resident or domiciled on the reservation or who are wards of tribal courts must have their consents validated by tribal courts except where jurisdiction has otherwise been vested in a state in accordance with section 101([illegible]. Off reservation, both tribes and states have jurisdiction to validate consents which may be exercised in accordance with section 101 of this Act.

(2) This clause provides that the tribe shall be notified of all voluntary proceedings. A number of states have recognized that it is important for tribes to have notice of these proceedings and have included such provisions in State law, e.g., Washington (RCW 26.33.090, as amended by L. 1987, c. 170), Minnesota (Minn. Stat. sec. 257.353(2)), or in tribal-state agreements, e.g., New Mexico-Navajo agreement (section III.A.2.(b)). Without notice of voluntary placements, tribes lose the opportunity to intervene in the case and request transfer of the case. Consequently, their ability to monitor and influence what is happening to a significant number of their children is greatly diminished.

(3) This clause mandates that consent to out-of-home placement shall not be considered to be equivalent to abandonment by the parent or Indian custodian. Some courts have utilized voluntary consents as grounds to involuntarily terminate parental rights or to change the child's domicile in order to improperly assert jurisdiction. See, *e.g.*, *Matter of Adoption of Halloway*, *supra*.

(4) This clause requires that IHS ensure that parents are informed of their rights under this Act and that the IHS is in compliance with this provision of the Act. This clause is designed to increase compliance with this section and to address instances in which IHS personnel have reportedly helped effectuate consensual placements not in accordance with the requirements of this section.

(b) Clarifies that upon revocation of consent to a foster care placement, the child is to be immediately returned to the parent or Indian custodian unless to do so would subject the child to a substantial and immediate danger of serious physical harm or threat of such harm. The amendments explicitly provide that the pendency of an involuntary child custody proceeding is not adequate reason to refuse to return the child to the parent or Indian custodian. These amendments are designed to ensure that parents who have voluntarily relinquished custody are truly able to regain their children upon demand as the statute intends. See Minnesota Family Preservation Act, Minn. Stat. sec. 257.353(4) (child must be returned within 24 hours).

(c) Amendments are made to the consent to termination of parental rights, preadoptive or adoptive placement provisions which are similar to the amendments in subsection (b) above. Also, the amendments clarify that consent may be withdrawn at any time prior to the entry of a final decree of adoption. This affirms the case of Angus v. Joseph, 655 P.2d 208 (Or. Ct. App. 1982), rev. den. 660 P.2d 683 (1983), cert. den. 104 S.Ct. 107 (1983) and reverses the cases of In the Interest of L.D.R.T., 391 N.W.2d 594 (N. D. 1986) and Matter of J.R.S., supra, in which it was erroneously held that consent could not be revoked once parental rights are terminated even though the adoption itself had not been finalized. This clarification is important because often the termination of parental rights is entered immediately after consent is given, effectively rendering the revocation meaningless if the L.D.R.T. and J.R.S. interpretation is accepted. Finally, the amendments make clear that Indian custodians may withdraw consent under this section, thereby conforming this section with subsection (b).

(d) Clarifies that a fraudulent consent may be challenged so long as a petition is filed within two years of the entry of the decree of adoption, see BIA Guidelines, sec. G.1., and that a preponderance of the evidence standard applies to such a proceeding.

SEC. 105 (amends Sec. 104 of ICWA [25 U.S.C. 1914])

(a) Extends the provision authorizing challenges to proceedings which contravene the ICWA as follows: preadoptive and adoptive placements are explicitly included under this section; violations of the order of placement (section 105 of ICWA) and adoption set-aside (section 106 of ICWA) provisions would also give rise to a challenge under this section; the invalidity of a prior proceeding may be grounds to invalidate a subsequent proceeding; extended family members may intervene in these proceedings and may mount independent challenges alleging a violation of the order of placement. These changes are designed to strengthen the ability of wronged children, parents, tribes or custodians to challenge proceedings that have not complied with the ICWA, thereby creating a more viable mechanism for overseeing compliance and protecting Indian children and parents. These amendments would address the *D.E.D. v. Alaska*, *supra*, and *Matter of M.E.M.*, 679 P.2d 1241 (Mont. 1984) cases to the extent that they imply that the flaws of an earlier proceeding may not be grounds to overturn subsequent proceedings. Of course, if the earlier rulings were not necessary prerequisites to the later proceeding and the aggrieved individual received notice and an opportunity to be heard in the later proceeding, the earlier failures to comply with the statute might not cause the later proceeding to be invalidated. In view of the expanded nature of this section, a clause has also been added which limits review to two years after final adoption., At present, the section contains no time limitation.

(b) Clarifies that federal courts have jurisdiction over challenges under this section and have habeas corpus jurisdiction over Indian child welfare cases. These changes would make clear that the analysis in Lehman v. Lycoming County, 458 U.S. 502 (1982) -- in which the court ruled that habeas corpus is not a remedy applicable to state child custody proceedings because such proceedings have historically been the responsibility of states -- is not applicable in the Indian Child Welfare context because of the extensive Federal interest in the sphere of Indian affairs. In addition, this change would overrule Kiowa Tribe v. Lewis, 777 F.2d 587 (10th Cir. 1985), cert. den. 107 S. Ct. 247 (1986) and other cases which refused to review state court interpretations of federal law.

(c) Provides for expedited proceedings upon request of any party to the proceeding. There are far too many cases which continue for years, as many as seven, before they are resolved. See, e.g., Matter of Adoption of Halloway, supra. This is not in the best interests of the child, parents or tribe and this clause is meant to address this problem.

SEC. 106 (amends Sec. 105 of ICWA [25 U.S.C. 1915])

(a)-(c) Strengthens the placement preferences by making them mandatory except in four instances: (1) when the child is of sufficient age and requests a different placement; (2) the child has extraordinary physical or emotional needs, as established by the testimony of qualified expert witnesses, that cannot be met through a placement within the order of placement; (3) there is clear and convincing evidence, including testimony of qualified expert witnesses, that placement within the order of placement is likely to result in serious emotional or physical damage to the child; (4) suitable families within the order of placement are unavailable even after a diligent search to find such families. These changes are made because of the lack of compliance with the placement preferences by many state and private agencies. For example, a 1983 California audit revealed that about half of the placements fell outside of all the placement preferences without any showing-that there was good cause for an out of preference placement. In addition, many courts have abused the good cause exception by using that exception to deny placements on the reservation because, for example, they think it is too rural, that no doctors are available or for other culturally inappropriate reasons. The exceptions to mandatory placements in new subsection (c) are derived from BIA Guidelines, section F.3., with one addition, the clause dealing with evidence of serious emotional and physical harm -- the changing of the preferences from presumptive to mandatory gives rise to the need for this additional exception.

(d) Amends subsection 1915(c) to provide that a placement preference (and request for confidentiality) of a parent or child shall be considered only if it would lead to a placement within the placement categories. This reflects the notion that the parent does not have the right, by means of a request for anonymity, to prevent the child from access to his or her Indian heritage. The agreement between the Navajo Tribe and State of New Mexico contains such a provision, section V.D. The amendments also provide that the request for confidentiality shall not be grounds to fail to provide notice to the tribe and non-consenting parent for much the same reason, as well as the need to protect the constitutional rights of the non-consenting parent. See Stanley v. Illinois, 405 U.S. 645 (1972).

(e) Amends subsection 1915(d) to provide that the State shall promulgate separate state licensing standards for Indian homes in consultation with affected tribes and place children in tribally licensed and approved homes if necessary to meet the requirement that the prevailing social and cultural standards of the Indian community be utilized in placing Indian children. Many state licensing standards contain elements that are inappropriate in the Indian cultural and socioeconomic context. These unnecessary criteria can result in a shortage of Indian foster and adoptive homes for State placements. By promulgating separate licensing standards and utilizing tribally licensed and approved homes, states may alleviate this shortage. States, of course, have an affirmative duty to actively take affirmative steps to recruit Indian foster and adoptive homes.

(f) Amends subsection 1915(e) to make explicit that efforts to comply with the order of placement must include contacting the tribe and notice to extended family members (with identifying information eliminated if the court sees fit to honor a request for confidentiality), and a search of national, state, county, tribal and Indian organization listings of Indian homes. This addition to the subsection is a modified version of language included in the commentary to section F. 3. of the BIA guidelines and is considered necessary, once again, to assure compliance with the placement provisions.

SEC. 107 (amends Sec. 106 of ICWA [25 U.S.C. 1916])

(a) Explicitly provides for notice to the biological parents, prior Indian custodian and the tribe in any case where an adoption is vacated in order to enable them to exercise the rights granted by this section. The BIA

Guidelines, section G.3., provide for notice to the parent or Indian custodian. The amendments also clarify that all relevant provisions of the Act, including the notice, jurisdiction and burden of proof sections, apply to Indian children whose adoptive placements terminate. Finally, the section is amended to provide for notice to the tribe and a right to intervene when adopted Indian children are placed in foster care. These provisions recognize that reestablishing the child's connection with his tribe and family in cases where an adoptive placement has broken down is often in the child's best interest.

(b) Provides that whenever such children are not returned to their biological parent or Indian custodian, placement shall be made in accordance with the ICWA and that, in this context, extended family shall include the extended family of the biological parents or prior Indian custodian. See explanation to subsection a.

(c) Provides for notice to the tribe, as well as parents or Indian custodian whose parental rights have not been terminated, whenever the foster care placement of an Indian child is reviewed or changed. This is implicit in the Act at present and included in the BIA Guidelines, section G.3. However, such notice is not always sent at present.

SEC. 108 (amends Sec. 107 of ICWA [25 U.S.C. 1917])

Allows the tribe and adoptive parents, as well as an adult adoptee, to petition for information about an adopted child. Both have an obvious interest in obtaining such information. This section is also amended to make clear that where court records are insufficient to enable a court to assist an Indian adoptee to secure the rights contemplated by Section 107, the court is required to seek the necessary information from agency and other records that may be subject to court order. Finally, the amendments provide that the names of the biological parents shall be made available to the petitioner, as well as the names and tribal affiliation of grandparents, where necessary (e.g., where the natural parent of the adopted child was also adopted).

SEC. 109 (amends Sec. 108 of ICWA [25 U.S.C. 1918])

Amends this section to make the reassumption provisions applicable only in the context of reassumption of exclusive jurisdiction over all voluntary proceedings. This section, as currently drafted, has served to confuse state courts and in fact has led one court in Native Village of Nenana v. Alaska Dept. of Health & Social Services, supra, to conclude that absent petition under section 108, the village in question had no jurisdiction over child welfare proceedings. In essence, it construed this section as taking away the tribal jurisdiction possessed by the village prior to the ICWA! The amendments to section 101(a) of this Act, together with the amendments to this section, make clear it was not the intent of the ICWA to remove jurisdiction from tribes -- the 101 amendments also eliminate the need for this section to be as expansively drafted as is presently the case.

SEC. 110 (amends Sec. 110 of ICWA [25 U.S.C. 1920])

Clarifies that the parent or Indian custodian has the right to petition any court with jurisdiction, including Federal court, to regain custody in a case where a child has been illegally removed or retained. At present, the section is silent as to whether parents and Indian custodians have that right. If they do not, there may be no remedy in a case where a person illegally gains or retains custody of a child without attempting to have that custody formalized by a court.

SEC. 111 (amends Sec. 112 of ICWA [25 U.S.C. 1922])

(a) Amends the existing section to make clear that a state agency has the authority to remove on an emergency basis all Indian children located off the reservation. Some states have been reluctant to deal with emergency cases involving Indian children because of an ambiguity that they perceive regarding the scope of this section. This section is also amended to provide that, whenever possible, emergency placement shall be made in accordance with the order of placement in section 1915.

(b) Requires that a court affirm the need for an emergency placement within three working days of the child's removal unless the child can be returned prior to that time (the requirement that the child be returned immediately if the emergency has ended is unchanged). In addition, the section requires that unless the child is returned to the parent or Indian custodian within 10 days, the state, in the absence of a section 109 tribal-state agreement to the contrary, must take steps to either transfer the child to the tribe (in the case of a child who is resident or domiciled on the reservation or a ward of the tribal court) or commence a child custody proceeding in State court. Ongoing efforts to prevent removal of the child must continue while a petition is pending. No emergency custody order shall remain in force for more than 30 days (unless there is a delay in the child custody proceeding because of the requirements in section 101). These changes are designed to prevent emergency proceedings from turning into long-term involuntary placements, thereby circumventing the provisions of the Act. The changes are also designed to make sure that the state does not obtain continuing jurisdiction over a child through the emergency removal provision in instances where the child would otherwise be subject to the exclusive jurisdiction of the tribe.

SEC. 112 (new section 124 of the ICWA)

(a) Requires the Secretary to establish a Indian Child Welfare monitoring committee of not less than 3 persons for each area office. The members of each committee are to be appointed for two years from a list of nominees furnished by Indian tribes and organizations and shall represent diverse elements of the Indian community. The purpose of the committees is to monitor compliance with the ICWA. The nominating structure is derived from 20 U.S.C. sec. 1221g pertaining to the National Advisory Council on Indian Education.

(b) Provides that any state in which a Federally-recognized Indian tribe is located or which contains an Indian population which exceeds 10,000 must require that all of its licensed private agencies comply with the Act and periodically audit their compliance. Private adoption agencies often fail to comply with the Act with few, if any, consequences. This amendment would provide a strong incentive for compliance. The Minnesota Indian Family Preservation Act, Minn. Stat. secs. 257.352 and 257.353, includes private placement agencies under its aegis and the Washington Tribal-State Agreement, Part II, sec. 6, requires compliance of private agencies as a condition for continued licensure. States which do not meet the above criteria would be permitted and encouraged to establish such a regulation, but would not be required to do so.

SEC. 113 (amends Sec. 201 of ICWA [25 U.S.C. 1931])

(a) The amendments make clear that priorities in grant programs shall be set by the tribes, not the BIA, and that grants may be used for legal representation for the tribe and for cultural and family-enriching activities. These changes are meant to address the administration of the ICWA grant program by the BIA whereby the Bureau's has attempted to set its own priorities and has refused to allow grant money to pay for tribal legal representation.

(b) Provides that all placements in tribally licensed or approved foster or adoptive homes, whether located on or off the reservation, qualify for applicable federally assisted programs, such as title IV-E payments for foster care and adoption assistance. This would ensure that the original purpose of the "equivalent" language of this section is fulfilled, namely, that Indian tribal foster and adoptive homes are eligible for funds appropriated for adoptive and foster care under the Social Security Act.

(c) Provides that, notwithstanding P.L. 96-272, tribes may develop their own systems for foster care licensing, development of case plans and case plan reviews. There are some potential inconsistencies between the ICWA and 272 as applied and differences between the resources available to state and tribal social services agencies. For example, the permanancy planning provision in 272 is sometimes interpreted as placing strict limits on the length of foster care. Under ICWA, it may sometimes be that a long-term arrangement is the only way to preserve the child's connection with his or her tribe and heritage. Moreover, the review system by 96-272 may not make sense in the context of a small, personalized tribal program. Tribes should have the flexibility to structure child placements and their child welfare programs in general notwithstanding their receipt of funds authorized by P. L. 96-272.

(d) Provides that the grant review process must utilize individuals with knowledge of Indian child welfare chosen in consultation with tribes who are not Federal employees. The grant review process has been widely criticized by tribes for lack of fairness, impartiality and rationality. This amendment is an attempt to improve the process. This subsection also provides that tribes throughout the country are eligible for grants to make clear that tribes, Native villages and non-profit regional associations in Alaska are eligible for grants.

SEC. 114 (amends Sec. 202 of ICWA [25 U.S.C. 1932])

Makes the same changes to the grant sections applicable to Indian organizations as are made in subsections (a), (b), and (d) of Section 112. The changes explicitly indicate that the Secretary shall award grants to Indian organizations to make clear that the Secretary may not unilaterally eliminate funding for off reservation programs.

SEC. 115 (amends Sec. 203 of ICWA [25 U.S.C. 1933])

(a) Requires IHS and BIA to enter into an agreement relating to the establishment, operation and funding of Indian child and family services programs, including the use of IHS money for such purposes. This change is designed to accomplish the original intent of this section -- programmatic and financial involvement of IHS in Indian Child Welfare.

(b) Provides independent appropriations authorization for Indian Child Welfare grants and related training programs. This is designed to indicate that the ICWA grant program and other child welfare funding is not to be the first program to be eliminated if budget reductions are required.

(c) Provides that indirect costs of ICWA grant programs are to be funded from BIA contract support funds and that all funds appropriated for these programs shall go to the tribe and not to BIA administration or programs. This amendment is meant to ensure that, given the inadequate level of funding for ICWA grants, all money that is appropriated is spent directly on the provision of child welfare services by the tribe.

SEC. 116 (amends Sec. 301 of ICWA [25 U.S.C. 1951])

(a) Provides that information relating to adoptions, retroactive to the effective date of ICWA, shall be sent to the Indian child's tribe, as well as to the Secretary; requires each court system to designate a responsible individual(s) to comply with the Act. Recordkeeping and access to information has been sporadic under the current provision. These changes are designed to improve the system and also to ensure that the tribe has information about its children. The Minnesota Indian Family Preservation Act, Minn. Stat. sec. 257.356, provides for such information to be sent to the tribe.

(b) Requires the Secretary to provide all information in his possession to the tribe, adoptive or foster parents, or adult adoptee, including the names of all parents, unless the parents are still living and have requested confidentiality. The rationale for this change is that in the absence of a request for confidentiality, there is no reason to withhold information from an adult or tribe. In the case of a request for confidentiality, the Secretary must provide enough information for the tribe to make its own determination as to an adopted child's eligibility for tribal membership, rather than permitting the BIA to make that determination for the tribe. See Minnesota Indian Family Preservation Act, Minn. Stat. 257.356(2). The presumption should be in favor of maximum disclosure with only that information relating directly to the identity of the specific person requesting confidentiality withheld and not other information relating to, for example, the child's other parent. The rights in this section are, of course, in addition to those rights provided by section 107.

(c) Requires the state social services agency to annually prepare a summary of Indian children in foster care, preadoptive or adoptive placements and submit it to the Secretary and the Indian child's tribe. Again, this is designed to improve the quality of information available to all concerned.

TITLE II - SOCIAL SECURITY ACT AMENDMENTS
SEC. 201

Amends section 408(a) of Title IV of the Social Security

Act (42 U.S.C. 608(a)) to include in the definition of "dependent child" any Indian child placed in foster care whose placement and care are the responsibility of his or her tribe. This amendment is designed to make clear that children placed by tribal social services agencies in licensed or approved facilities are eligible for funding under the Social Security Act. Currently, the statute seems to require that placement be made by a state agency, state approved agency or other public agency with which the state has an agreement. Many tribal programs do not fall into these categories. See Native Village of Stevens v. Smith, 770 F.2d 1486 (9th Cir. 1985), cert. den. 106 S.Ct. 1514 (1986).

SEC. 202

Amends section 422 of Title IV of the Social Security Act (42 U.S.C. 622) to require States to include as part of their Title IV-B child welfare plans, a comprehensive plan to ensure State compliance with ICWA developed in consultation with all tribes and Indian organizations with child welfare programs within the state. By including this provision in the Social Security Act, thereby requiring that compliance be measured in the periodic audits conducted by HHS, it is hoped that compliance with the ICWA will improve.

SEC. 203

Amends section 471 of Title IV of the Social Security Act (42 U.S.C. 671) to require States to include as part of their Title IV-E foster care and adoption assistance plans, a comprehensive plan to ensure State compliance with ICWA developed in consultation with all tribes and Indian organizations with child welfare programs within the state. As part of this plan, states must recruit and license Indian foster homes and place (and reimburse for) children in tribally licensed and approved facilities. Again, by including this provision in the Social Security Act, thereby requiring that compliance be measured in the periodic audits conducted by HHS, it is hoped that compliance with the ICWA, particularly the foster home reimbursement and placement provisions, will improve.

TITLE III - MISCELLANEOUS

SEC. 301

These amendments take effect 90 days after enactment.

SEC. 302

Requires that the amendments be circulated to states and tribes within 45 days.

SEC. 303

Provides that the unconstitutionality of one provision in this Act will not affect the remaining provisions.

APPENDIX C

THE INDIAN SOCIAL SERVICES ASSISTANCE ACT OF 1987

A BILL to amend the Social Services Block Grant, Adoption Assistance and Child Welfare Act of 1980, and the Alcohol, Mental Health and Drug Abuse Act, to authorize the consolidation of certain block grants to Indian tribes, to provide for the collective operation of programs by Indian tribes, to provide grant protection to Indian tribes and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That this Act may be cited as the "Indian Social Services Assistance Act of 1987".

TITLE I - SOCIAL SERVICES BLOCK GRANT AMENDMENTS

SEC. 101. Section 2001 of the Social Security Act (42 U.S.C. 1397) is amended--

(1) by adding after the phrase "encouraging each State" the phrase "and Indian tribe",

(2) by adding after the phrase "in that State" the phrase

"(or in the case of Indian tribes, within the Indian community)",

(3) by striking out "and" at the end of clause (4),

(4) by striking out the comma at the end of clause (5) and inserting instead "; and", and

(5) by adding after and below clause (5) the following new clause:

"(6) alleviating poverty,".

SEC. 102. Section 2002 of the Social Security Act (42 U.S.C. 1397a) is amended--

(1) by adding after the word "State" each place that it appears in subsection (a)(1) the phrase "and Indian tribe", and

(2) by adding after the word "State" each place that it appears in subsections (c) and (e) the phrase "or Indian tribe".

SEC. 103. (a) Section 2003(b) of the Social Security Act (42 U.S.C. 1397b(b)), is amended --

(1) by adding after "than" the following clause: "Indian tribes and",

(2) by striking "subsection" after the word "under" and inserting instead "subsections", and

(3) by adding after "(a)" the clause "and (e)".

(b) Section 2003 of that Act (42 U.S.C. 1397b) is amended by adding at the end the following new subsection:

"(e) A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be calculated by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{U. S. population}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of U. S. population below the poverty level"}}$$

SEC. 104 Section 2004 of the Social Security Act (42 U.S.C. 1397c) is amended--

(1) by adding after the word "State" the first two times that it appears in that section the phrase "or Indian tribe", and

(2) by adding after the word "State" the third time it appears in that section the phrase "(or in the case of Indian tribes, within the Indian community)".

SEC. 105 Section 2005 of the Social Security Act (42 U.S.C. 1397d) is amended--

(1) by adding after the phrase "the State" each place it appears in subsection (a) the phrase "or Indian tribe",

(2) by adding after the phrase "of State and local law" in subsection (a)(7) the phrase "or, where it applies, tribal law", and

(3) by adding after the word "State's" each place it appears in subsection (b) the phrase "or Indian tribe's".

SEC. 106 Section 2006 of the Social Security Act (42 U.S.C. 1397e) is amended--

(1) by adding after the phrase "Each State" in subsection (a) the phrase "and Indian tribe",

(2) by adding after the phrases "as the State" and "The State" in subsection (a) the phrase "or Indian tribe",

(3) by adding after the phrase "within the State" in subsection (a) the phrase "(or, in the case of an Indian tribe, within the Indian community)"

(4) by adding at the end of subsection (b) the following new sentence:

"Tribal audits shall be conducted in accordance with procedures established by the Secretary."

SEC. 107 Section 2007 of the Social Security Act (42 U.S.C. 1397f) is amended by adding after the word "State" each place it appears in that section the phrase "or Indian tribe".

SEC. 108 (a) Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended by adding at the end the following new section:

"DIRECT GRANTS TO INDIAN TRIBES

SEC. 2008. (a) The Secretary shall make payments under section 2002 to an Indian tribe which undertakes to operate a program under this title. Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under section 2003(e) of this title (42 U.S.C. 1397b(e)) as the ratio determined by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{total Indian population residing on or near a reservation}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of total Indian population residing on the reservation below the poverty level"}}$$

If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall be reallotted to the tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula.

(b) For purposes of this title, the term 'Indian tribe' means any Indian tribe, band, nation, or organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In Alaska, regional associations defined in section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(a)) shall be treated as tribes for the purposes of funding under this Title provided that such an association may not receive funding for any village within its region that (1) applies separately for direct funding under this Title or (2) notifies the Secretary that it does not want its regional association to apply for social services funding on its behalf.

(c) Notwithstanding direct grants to Indian tribes pursuant to this Act, States, in their allocation of money from the Social Services Block Grant shall not discriminate against Indian-controlled off-reservation programs serving Indian people."

TITLE II - ADOPTION ASSISTANCE AND CHILD WELFARE ACT AMENDMENTS

SEC. 201 Section 422 (b)(7) of Part B of title IV of the Social Security Act (42 U.S.C. 622(b)(7)) is amended by inserting after the phrase "as authorized by the State" the phrase ", including the funding of Indian-controlled off-reservation programs serving Indian children, wherever possible."

SEC. 202 Section 428 of Part B of title IV of the Social Security Act (42 U.S.C. 628) is amended --

(1) by striking out in subsection (a) "may, in appropriate cases (as determined by the Secretary)" and inserting instead "shall"

(2) by striking out in subsection (a) "approved under" and inserting instead "which meets the requirements of subsections 422(a) and (b)(2) through (b)(8)"

(3) by striking out the second sentence in subsection (a) and inserting instead "A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be equal to the amount which bears the same ratio to the amount appropriated for the fiscal year as the ratio determined by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{U. S. population}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of U. S. population below the poverty level"}}$$

(4) by striking out everything in subsection (b) and inserting instead:

"(b)(1) Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under subsection (a) (42 U.S.C. 628(a)) as the ratio determined by the following formula:

$$\frac{\text{Indian population of tribe residing on or near the reservation}}{\text{total Indian population residing on or near a reservation}} \times \frac{\text{per centum of Indian population of tribe residing on the reservation below the poverty level}}{\text{per centum of total Indian population residing on a reservation below the poverty level}}$$

If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall be reallotted to the tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula.

(2) Subject to the conditions set forth in subsections (a) and (b)(1), the Secretary shall pay an amount equal to either (A) 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) or (B) the per centum derived by utilizing the formula provided in section 474(e)(3)(A) of this Act (42 U.S.C. 674(e)(3)(A)), whichever is greater.

(3) A tribe shall be permitted to use Federal or State funds to match payments for which tribes are eligible under this Section, provided that the Federal or State funds are authorized for purposes related to the goals and objectives of this Part.

(4) In any case where a satisfactory plan under section 422 has been submitted by an Indian tribe, the Secretary shall reduce the tribal share otherwise required under subsection (b)(2) upon a showing by the tribe that it does not have adequate financial

resources to provide the required match due to a lack of comparable Federal and State funds, inadequate tribal resources, an inadequate tax base, or any other factor giving rise to financial hardship. The Secretary shall construe this section liberally with the goal of ensuring that all tribes submitting the required plan receive the funding provided for by this Act."

SEC. 202 Section 474 of Part E of Title IV of the Social Security Act (42 U.S.C. 674) is amended by adding at the end the following new subsection:

"(e) The Secretary shall make payments to an Indian tribe which undertakes to operate a program under this Part.

(1) The provisions and requirements of sections 471, 472, 473 and 476 of this Act (42 U.S.C. 671, 672, 673 and 676) shall be applicable to Indian tribes except as follows:

(A) Subsections 10, 14 and 16 of section 471 of this Act (42 U.S.C. 671 (10), (14) and (16)) shall not apply. Instead, Indian tribes shall develop systems for foster care licensing and placement, development of case plans and case plan review consistent with tribal standards and the Indian Child Welfare Act (25 U.S.C. 1901 et seq.).

(B) The Secretary may reasonably alter the requirements of other sections of this Part for the purpose of relieving any unreasonable hardships upon the Indian tribes that might result, due to their unique needs, from a strict application of a particular requirement.

(2) For purposes of this Part, the term "Indian tribe" means any Indian tribe, band, nation or organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In Alaska, regional associations defined in section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(a)) shall be treated as tribes for the purposes of funding under this Title provided that such an association may not receive funding for any village within its region that (1) applies separately for direct funding under this Title or (2) notifies the Secretary that it does not want its regional association to apply for social services funding on its behalf.

(3) (A) The payment of funds to Indian tribes shall be calculated by the same formula applicable to states in subsection (a) of this section except that tribes shall be entitled to 100 per centum of the expenditures necessary for the proper and efficient administration of the plan as enumerated in subsection (a)(3). Per capita income shall be calculated by including only Indians who reside on the tribe's reservation.

(B) A tribe shall be permitted to use Federal or State funds to match payments for which tribes are eligible under this section, provided that the Federal or State funds are authorized for adoption assistance, foster care maintenance payments or administration of the tribal plan developed pursuant to this

Part.

(C) In any case where a satisfactory plan has been submitted by an Indian tribe, the Secretary shall reduce the tribal share otherwise required under subsection (a) upon a showing by the tribe that it does not have adequate financial resources to provide the required match due to a lack of comparable Federal and State funds, inadequate tribal resources, an inadequate tax base, or any other factor giving rise to financial hardship. The Secretary shall construe this section liberally with the goal of ensuring that all tribes submitting the required plan receive the funding provided for by this Act, provided that

(i) In any case where the Secretary reduces the tribal share calculated pursuant to subsection (a)(1) of this section, he shall have the authority to review and approve the tribal payment schedule for foster families and child-care institutions, except that in no case shall he disapprove any schedule which proposes payments that do not exceed the amount provided for any State wherein the reservation is located, and

(ii) In any case where the Secretary reduces the tribal share calculated pursuant to subsection (a)(2) of this section, he shall have the authority to review and approve the tribal payment schedule provided for in adoption assistance agreements, except that in no case shall he disapprove any schedule which proposes payments at a level that does not exceed the amount provided for any State wherein the reservation is located."

TITLE III - ALCOHOL, MENTAL HEALTH AND DRUG ABUSE BLOCK GRANT AMENDMENTS

SEC. 301 Section 1913(b) of the Public Health Service Act (42 U.S.C. 300x-1a(b)) is amended --

(1) by striking out subsections (1) and (2) and inserting instead

"(1) A sum shall be reserved for the direct provision of funds to the governing bodies of Indian tribes. The per centum of the sums appropriated under this title to be set aside for Indian tribes shall be equal to the amount which bears the same ratio to the amount appropriated for the fiscal year as the ratio determined by the following formula:

$$\frac{\text{Indian population residing on or near the reservation}}{\text{U. S. population}} \times \frac{\text{per centum of Indian population residing on the reservation below the poverty level}}{\text{per centum of U. S. population below the poverty level}}$$

(2) Each tribe shall be entitled to an allotment which bears the same ratio to the amount set aside for Indian tribes under clause (1) of this subsection (42 U.S.C. 300x-1a(b)(1)) as the

ratio determined by the following formula:

$$\frac{\text{Indian population of tribe residing on or near the reservation}}{\text{total Indian population residing on or near a reservation}} \times \frac{\text{per centum of Indian population of tribe residing on the reservation below the poverty level}}{\text{per centum of total Indian population residing on a reservation below the poverty level}}$$

provided that no tribe or tribal organization shall receive less than the amount that it received during any of the fiscal years from 1982 through 1988. If any Indian tribes choose not to operate a program under this Title, the sums that would be payable to those tribes shall (A) be utilized to make payments to those tribes that are entitled to additional amounts by reason of having received grants during any of the fiscal years from 1982 through 1988, and (B) be reallocated, if there are sums remaining following the distribution under clause (A), to tribes that are operating programs under this Title in accordance with the per centum of the total set aside to which each tribe is entitled pursuant to the above formula. If the unclaimed sums are insufficient to fully fund the tribes eligible for the extra payments provided for in clause (A), any additional sums that are needed shall be deducted from the allotments of the State in which the tribes are located.

TITLE IV - CONSOLIDATED FUNDING FOR INDIAN TRIBES

SEC. 401 (a) Notwithstanding any other provision of law, upon the application of an Indian tribe under this title, the Secretary of Health and Human Services shall consolidate the grants made by that Department directly to an Indian tribe under titles XX and IV-B of the Social Security Act, Title XIX of the Public Health Service Act and under the Low-Income Home Energy Assistance Act of 1981.

(b) Any consolidated grant for any Indian tribe shall not be less than the sum of the separate grants which that tribe would otherwise be entitled to receive for such fiscal year.

(c) The funds received under a consolidated grant shall be expended for the programs and purposes authorized under any or all of the grants which are being consolidated, in accordance with all conditions and requirements which would be applicable to grants for those programs and purposes in the absence of the consolidation, but each Indian tribe shall determine the allocation of the funds granted to each such program and purpose.

(d) (1) Notwithstanding any other provision of law, an Indian tribe shall be entitled to submit a single (A) application for a consolidated grant in accordance with this title for any fiscal year, and (B) preexpenditure report with respect to each such consolidated grant received for any fiscal year, in accordance with regulations promulgated by the Secretary.

(2) Notwithstanding any other provision of law, an Indian tribe which elects to expend none of its consolidated grant funds for any one grant program shall not be required, as a condition of receiving a consolidated grant, to comply with the conditions or to make the reports or assurances applicable to that program.

(3) Nothing in this title shall preclude the Secretary from providing procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving funding under any consolidated grant.

TITLE V - COLLECTIVE OPERATION OF PROGRAMS AND GRANT PROTECTION FOR INDIAN TRIBES

SEC. 501 For any of the programs covered by any of the Titles in this bill, an Indian tribe may--

(a) enter into agreements with other Indian tribes for the provision of services by a single organizational unit providing for centralized administration of services for the region served by the Indian tribes so agreeing. In the case of such an agreement, the organizational unit may submit a single application on behalf of all of the tribes which are a party to the agreement and, unless the organizational agreement provides otherwise, shall receive an amount equal to the amount to which the tribes would have been entitled had they applied individually;

(b) contract with qualified providers for the delivery of services.

SEC. 502. All funds and programs provided for under all Titles in this bill shall be considered as supplemental or in addition to all other programs, grants, contracts or funds provided by any federal, state, county government, department or other agency now serving Indian tribes, their service populations or off-reservation Indian people. No such funds or programs may be reduced or eliminated as a result of funds or programs provided by this Part except in the case where direct funds are already being provided to tribes pursuant to Titles XX or IV-B of the Social Security Act or Title XIX of the Public Health Service Act and the continuation of those direct grants in addition to the grants provided by this Act would be duplicative.

TITLE VI - CENSUS BUREAU STATISTICS

SEC. 601 The Census Bureau shall hereafter--

(a) include calculations of the nationwide poverty level for Indians residing on or near a reservation in its yearly report on income and poverty,

(b) prepare a uniform national estimate of the yearly population growth rate expected for Indians living on or near reservations based upon data collected in the previous two decennial censuses relating to population growth, birth rates, death rates, and other relevant indicia of population trends, provided, however, that if the Census Bureau hereafter decides to include reservation-specific population estimates for Indians residing on or near each reservation in its yearly population updates, it shall no longer be required to calculate an estimated national growth rate for Indian reservations.

TITLE VII - DEFINITIONS, EFFECTIVE DATE, AND AUTHORIZATION OF APPROPRIATIONS

SEC. 701 For the purposes of this Act, the term--

(a) "Indian" means a person who is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe.

(b) "Poverty level" means the per centum of the relevant population below the poverty thresholds set by the Census Bureau on a yearly basis. In determining the per centum, the calculation based upon family aggregate cash income shall be utilized.

(c) "Reservation" means Indian country as defined in section 4(10) of P.L. 95-608 (25 U.S.C. 1903(10)), as well as Alaska Native villages and the traditional Indian areas of Oklahoma.

(d) "Population" means the most recent available population statistics compiled by the Census Bureau. In calculating population on or near a tribe's reservation, the Secretary shall utilize the population statistics included in the last decennial census as updated by application of the growth rate calculated by the Census Bureau pursuant to section 601(b) of this Act (unless the Census Bureau hereafter includes reservation-specific population estimates in its yearly population updates, in which case those estimates shall be utilized by the Secretary).

(e) "Per capita income" means the per capita income statistics included in the last decennial census.

(f) "Near reservation" means those areas, communities and counties adjacent or contiguous to reservations. In the case where more than one reservation is adjacent or contiguous to an area, community or county, the Secretary shall confer with the affected tribes and determine the allocation of the near reservation Indian population as between the affected tribes. In the case where an adjacent or contiguous area, community or county includes a municipality with a population in excess of 50,000, the Secretary shall confer with the adjacent or contiguous tribes to determine the part of the population in such community that should be classified, for the purposes of funding, as residing near the reservation of the affected tribe.

(g) "Secretary" means the Secretary of Health and Human Services.

SEC. 702 The provisions of this bill shall be effective with respect to fiscal year 1989 and succeeding fiscal years.

SEC. 703 There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

APPENDIX D

SUMMARY OF THE INDIAN SOCIAL SERVICES ASSISTANCE ACT OF 1987

TITLE I - SOCIAL SERVICES BLOCK GRANT AMENDMENTS

Section 101 This section adds "alleviating poverty" to the purposes of the Social Services Block Grant (Title XX) and includes Indian tribes in the category of those who are encouraged to furnish social services to meet the goals specified in Title XX.

Section 102 This section adds Indian tribes to sections relating to eligibility for Title XX funds, timing of expenditures and purchase of technical assistance.

Section 103 This section sets aside a portion of the funds appropriated under Title XX for the direct payment of grants to Indian tribes. The amount of the set aside is determined by a formula which takes into account the Indian population residing on or near the reservation (the likely service area for the tribal social services program) and the nationwide percentage of on reservation Indians below the poverty level (which reflects the notion that given economic conditions on and near reservation, a larger percentage of the total population is likely to make use of social services; the choice of this particular multiplier is in part a reflection of the correlation between poverty and service population and in part based upon a desire to use criteria in the formula for which adequate data is available.) The amount payable to tribes is deducted from the total amount available to the States under the Social Services Block Grant.

Section 104 This section adds Indian tribes to a section of Title XX relating to the preparation of plans specifying the intended use of Block Grant funds.

Section 105 This section adds Indian tribes to a section which places limitations upon the use of Title XX grants.

Section 106 This section adds Indian tribes to a section dealing with reports and audits and specifies that tribal audits shall be conducted in accordance with procedures established by the Secretary of Health and Human Services.

Section 107 This section adds Indian tribes to a section dealing with the provision of Child Day Care services.

Section 108 This section authorizes Title XX payments to Indian tribes based upon a formula which takes into account the Indian population residing on or near the tribe's reservation and the percentage of Indians residing on the reservation with incomes below the poverty level. The rationale for this formula is the same as in section 103.

This section defines Indian tribes to include all federally recognized tribes, including Alaska Native villages and, except in certain circumstances, the definition also includes Alaska regional associations. This last clause recognizes that the regional associations are, in many cases, currently the social service providers for the villages in their geographic area. In addition, this section provides that States may not discriminate in their allocation of Title XX money against Indian-controlled programs serving Indian people living off-reservation.

TITLE II - ADOPTION ASSISTANCE AND CHILD WELFARE ACT AMENDMENTS

Section 201 This section requires States to include in their State plan provisions relating to the funding of Indian-controlled programs serving off-reservation Indians wherever possible. This is designed to ensure that the passage of this Act will not cause off-reservation programs (urban programs in most instances) to lose the opportunity to contract with States for the provision of services to Indian people.

Section 202 This section sets aside a portion of the funds appropriated under Title IV-B for the direct payment of grants for child welfare services to Indian tribes. The amount of the set aside is determined by a formula which takes into account the Indian population residing on or near the reservation and the nationwide percentage of on reservation Indians below the poverty level. The rationale for this formula is explained in section 103. All tribes who submit an acceptable plan are eligible for the direct federal payments. This is designed to reverse the Secretary's current interpretation of Title IV-B requiring as a prerequisite for funding that a tribe contract with the BIA, pursuant to P.L. 95-638, to provide social services directly to its people. Each tribe's allotment is based upon the population and poverty level criteria included in the set aside formula. The amount payable to tribes is deducted from the total amount available to the States under Title IV-B. Tribes are permitted to use Federal and State funds to satisfy the match requirement under Title IV-B provided that the Federal and State funds may be used for purposes which relate to the goals and objectives of Title IV-B. The matching fund formula provides for a reduction for most tribes below the 25 per centum match generally required under Title IV-B. This reflects the fact that most tribes have inadequate resources at present to fully fund these programs. All tribes may apply to the Secretary of Health and Human Services for further reductions in the matching share requirement in cases of financial hardship.

Section 203 This section would entitle tribes to receive direct federal reimbursement under Title IV-E of the Social

Security Act for foster care payments and adoption assistance. At present, only those tribes who are licensed state placing agencies or who have an agreement with the state may receive payment for foster care payments. See Native Village of Stevens v. Smith, 770 F.2d 1486 (9th Cir. 1985), cert. den. 106 S.Ct. 1514 (1986). The percentage of the payment to be reimbursed by the federal government would be based upon a weighted formula which takes into account per capita income of Indians on the reservation of the tribe relative to national per capita income. This is the same formula applicable to the states. 100% of tribal administrative costs would be paid (an increase over the State allotment -- States generally have more of a preexisting infrastructure than do tribes). Tribes are permitted to use Federal and State funds to satisfy the match requirement under Title IV-E provided that the Federal and State funds may be used for the activities funded by Title IV-E. In any case where, by tribal certification of financial hardship, the match is reduced in regard to the actual payments to be made (as opposed to administrative costs), the Secretary would have the authority to approve or disapprove the tribal payment schedule for foster families, child-care institutions and adoption assistance, although he would not have the right to disapprove of any schedule which sets payments at a level which does not exceed that of any state in which the tribe is located. This ensures fiscal accountability notwithstanding the waiver or reduction of the matching requirement.

This section also provides that the requirements of the Adoption Assistance and Child Welfare Act shall be applicable to tribes receiving these payments except for the provisions of that Act relating to foster care licensing, development of case plans and a case plan review system. In regard to these issues, tribes are instead required to develop systems that are consistent with tribal standards and the Indian Child Welfare Act. There are some potential inconsistencies between the ICWA and P.L. 96-272 as applied and differences between resources available to state and tribal social services agencies. For example, the permanancy planning provision in P.L. 96-272 is sometimes interpreted as placing strict limits on the length of foster care. Under the ICWA, it may sometimes be that a long-term arrangement is the only way to preserve the child's connection with his or her tribe and heritage. Moreover, the review system required by 96-272 may not make sense in the context of a small, personalized tribal program. Tribes should have the flexibility to structure child placements and their child welfare programs in general notwithstanding their receipt of funds pursuant to this Title.

TITLE III - ALCOHOL, MENTAL HEALTH AND DRUG ABUSE BLOCK GRANT AMENDMENTS

Section 301 This section would provide for direct grants to tribes under the Alcohol, Mental Health and Drug Abuse Block Grant. It sets aside a portion of the funds appropriated under this block grant based upon a formula which takes into account the Indian population residing on or near the reservation and the nationwide percentage of on reservation Indians below the poverty level (see section 103 explanation). Each tribe's allotment is based upon the population and poverty criteria included in the set aside formula. The amount payable to tribes is deducted from the total amount available to the States under the Alcohol, Mental Health and Drug Abuse Block Grant.

TITLE IV - CONSOLIDATED FUNDING FOR INDIAN TRIBES

Section 401 This section permits tribes to consolidate their grants under the Social Services, Alcohol, Mental Health and Drug Abuse and Low-Income Home Energy Assistance Block Grants. Tribes would need to make only one grant application and be permitted to determine the allocation of the funds received as between the different programs. This section reflects the notion that the problems which these programs address are interrelated and that increased coordination of the programs will result in more responsive and efficient programs.

TITLE V - COLLECTIVE OPERATION OF PROGRAMS AND GRANT PROTECTION FOR INDIAN TRIBES

Section 501 This section allows tribes to enter into cooperative services arrangements with each other. Tribes so agreeing would be permitted to submit a single funding application and would be entitled to an amount equal to the amount to which the tribes would have been entitled had they applied individually. This section also permits tribes to contract with outside providers for the delivery of services.

Section 502 This section provides that no existing funds or programs provided to Indian tribes, their service population or off-reservation Indian people may be reduced or eliminated by reason of the passage of this legislation, except in the case where tribes are already receiving direct grants through the programs covered by this Act and continuation of these preexisting grants would be duplicative. This section ensures that this Act does not have the unintended result of a decrease in services to Indian people. Unfortunately, some states have been far too eager to reduce budgets by denying Indian people services without regard to the availability of tribal or Federal services. Given the modest sums of money provided by this Act, tribes will certainly not be able to supply the entire panoply of services -- States must continue to supply their fair share (indeed, Indian people are entitled to the services available to all citizens of the State.)

TITLE VI - CENSUS BUREAU STATISTICS

Section 601 This section directs the Census Bureau to update on an annual basis nationwide statistics on the Indian poverty level. It also requires the Census Bureau to prepare a national estimate of the yearly population growth rate to be expected on reservations (to be used to update decennial census data). This data is necessary to ensure the accuracy of the data used in the formulas. This data is routinely prepared for non-Indian populations and it should not be difficult for the Census Bureau to comply with this section.

TITLE VII - DEFINITIONS, EFFECTIVE DATE, AND AUTHORIZATION OF APPROPRIATIONS

Section 701 This is the definitional section, including definitions of "Indian", "Indian tribe" (the same definition as in section 108), "Poverty level", "Population", "Per Capita Income", "Near reservation" (communities, areas and counties adjacent or contiguous to reservations, with certain exceptions), "Reservation" (which includes Alaska Native villages and traditional Indian areas of Oklahoma) and "Secretary".

Section 702 This section provides that this legislation shall be effective beginning in fiscal year 1988.

Section 703 This section authorizes the appropriation of such funds as may be necessary to carry out the provisions of this Act.

APPENDIX E

ASSOCIATION ON AMERICAN INDIAN AFFAIRS
Indian Social Services Assistance Act of 1987

The following amounts are rough estimates based on the proposed funding formulas.
(actual dollars except where noted)

Native American population on reservation	331,600
Native American population near reservation	313,700
Total Native American pop living on or near res.	645,300
Total United States population	226,545,805
Percent of all res. Nat. Amer. living below poverty	40.50
Percent of all US races living below poverty	11.70
Poverty factor	3.46

	Title XX Social Services	Title IVB Child Wel- Fost. Care	Title 19 Alcohol Ment. Hlth	Total
Total appropriation (in millions of dollars)	$ 2,700	$ 200	$ 495	$ 3,395
Total tribal appropriation (in millions of dollars)	26.6	2.0	4.9	33.5

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
							Reservation Data		
TRIBE NAME	RESERVATION NAME	STATE	Block Grant with res. pop. only	Block Grant for off res. pop.	Total	% of Title IVE Prog costs funded by Fed Govt	Native American Population	% Native Americans Below Poverty	Near reservation Native American Population
Tribes with determined off-reservation populations:									
Three Affiliated Tribes	Fort Berthold	ND	$ 127,332	$ 45,150	$ 172,482	94	2,651	37.5	940
Confederated Tribes - Umatilla	Umatilla	OR	49,073	41,344	90,417	92	946	40.5	797
Sac & Fox of Miss in IA	Sac & Fox	IA	21,225	13,137	34,362	92	454	36.5	201
Apache/Mescalero	Mescalero Apache	NM	88,689	31,873	120,562	93	1,945	35.6	699
Sisseton-Wahpeton Sioux	Sisseton	SD/ND	191,478	35,722	227,199	96	2,723	54.9	500
Chippewa, Saginaw	Isabella	MI	15,630	18,917	34,548	96	447	27.3	541
Tribes with undetermined off-reservation populations:									
Navajo	Navajo	AZ/NM/UT	6,799,657	*	*	95	105,123	50.5	*
Oglala Sioux	Pine Ridge	SD	747,633	*	*	96	11,888	49.1	*
Pueblo of Santo Domingo	Santo Domingo	NM	156,706	*	*	99	2,140	57.2	*
Qiuleute	Quileute	WA	9,052	*	*	95	275	25.7	*
Ute Mountain	Ute Mountain	UT	62,190	*	*	95	897	48.7	*

Notes:
A. * indicates to be determined
B. All figures based on 1980 Census data.

TESTIMONY OF MYRA M. MUNSON
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
November 10, 1987

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to speak before this committee today. I am currently the Commissioner of the Alaska Department of Health and Social Services. This is a multi-service agency with a broad array of responsibility for human service needs; including responsibility for the state's implementation of the Indian Child Welfare Act in Alaska.

Since 1979, I have had extensive familiarity with the Act. From 1980 through 1983 I worked for the Division of Family and Youth Services in Alaska, providing Indian Child Welfare Act training and policy analysis on a statewide basis. In this role, my responsibilities included implementing the Indian Child Welfare Act. In addition, as part of the Division's commitment to implementing the Act, I provided training for all new Family and Youth Services social workers and probation officers, as well as child welfare staff of most of the regional non-profit Native associations and village council members. The training focused on all aspects of the Act, including the state's responsibilities, the authority and powers enjoyed by Alaska Native villages, and the improvement of child welfare services to Alaska Native children.

For the next three years, I worked for the State Attorney General's Office and represented the Department of Health and Social Services in many child welfare cases. I continued to occasionally provide training for tribal council members and staff of associations, as well as staff in the Department of Health and Social Services.

It was during this time that the state of Alaska, at the impetus of former Governor Sheffield, began negotiations with representatives of Alaska Native villages and non-profit associations to develop a model Indian Child Welfare State-Tribal Agreement to offer to the villages in Alaska. That effort, in which I took part, has continued under the direction of Governor Cowper and with my full support. Continuing this process is a very high priority of this administration. I certainly hope before I leave this office, Alaska will be a signator with many Alaska Native villages to state-tribal agreements under the Indian Child Welfare Act.

From all of this experience, I have drawn some conclusions which I think merit consideration as you reexamine the

Indian Child Welfare Act. Perhaps the most significant conclusion is that the Indian Child Welfare Act was needed and has helped. Clearly, in our state and around the country the Act has had the effect of improving the quality of lives of Indian children, reducing the frequency of placements of Indian children in non-Indian homes, and improving the awareness of state administrators, judges, and social workers to the culture and governmental relationship of the tribe and the child and the child's family. Although there is a lot of work yet to be done, no Indian child's case is considered in my state without discussion of the requirements and policies of the Act.

More importantly, however, is that the Act has had the effect of empowering Alaska Native villages. By explicitly recognizing the interest and power tribes have concerning their children, the Act has triggered interest among tribal leaders and Indian and Alaska Native social service organizations. The passage of the Indian Child Welfare Act has significantly reduced the sense of powerlessness that Alaska Natives felt regarding their children. As a result of the Act's passage, issues regarding children and family problems are discussed in village councils, and villages are making significant decisions about the well-being of individual children and children as a group. This has caused village councils to focus their non-profit associations to direct resources on advocacy, training, and child welfare services. It has forced state officials and social workers in closer and more meaningful relationships with members of Alaska Native villages. All of this has had an empowering effect which has improved the situation of Alaska Native children.

The Indian Child Welfare Act of 1978 was enacted to protect the best interests of Indian children and preserve tribal integrity by reducing the numbers of Indian children removed from Indian homes and environments. Since the passage of the Act, the Alaska Department of Health and Social Services has moved to assure full implementation of the Act, thereby providing better casework services to Alaska Native children and their families.

Although the state's data systems are wholly inadequate for even the most fundamental management needs, we can, from the information which can be gleaned from this system, demonstrate clearly that there have been improvements. Alaska Native children are placed in Native homes far more often than in the past. We are still a long way from having accomplished this as thoroughly as we would like, but there has been improvement.

At the end of Fiscal Year 1986, 34 percent of Alaska children receiving protective services were Alaskan Native. Two-thirds of the Native children receiving services were in their own homes, while most of those in out of home placements (68 percent) were in the home of a relative or in a foster home.

The Division of Family and Youth Services is required by Titles IV-E and IV-B to periodically review the status of all children in custody. Three of the five regions in the State conduct all reviews of Native children with the participation of Native Elders. The remaining two regions follow that process on some, but not all, Native children, and will be formalizing the same procedure by the end of the fiscal year.

It is important to note that these changes have not resulted only from the Indian Child Welfare Act. They also result from a changing professional understanding of the needs of children in relationship to their family and extended family. In 1972, it was the commonly accepted practice that when a child was placed in care, there should be a period of time during which the child did not see the parent in order that the child could adjust to a new setting. We understand now that regular, frequent contact between parent and child is essential to reuniting the family and that the disruption in contact between the parent and child is damaging to the child as well as hurtful to the parent. This is a change in understanding that came about not only from the Indian Child Welfare Act, but from our continual efforts in the practice of child welfare to look at the needs of children.

The same kind of development has occurred in our understanding of the role of extended family and of families of the same race or culture. When I began practicing, culture or race was simply one more factor to be considered, not much more important than the religion of the parent, in deciding on the placement of the child. We have come to understand that the role of culture and race in a child's life is very complex and meaningful and cannot be ignored in placement decisions without causing great damage to the child and great loss to our communities. The Indian Child Welfare Act has furthered this understanding and has certainly imposed it where necessary. These changes have not come about solely because of the Indian Child Welfare Act.

In assessing the impact of the Act, it is also important that we look at factors which have mitigated its effectiveness. Not all of these factors require statutory change. Perhaps most importantly, the Act was significantly underfunded. The funding policies of the Bureau of Indian Affairs, particularly those related to distributing funds, added even more to the potential limitations. It is my personal conviction that the Act might never have been necessary had every Indian parent had easy access to competent legal representation whenever they came in contact with a state court. Similarly, if every tribe had had access to competent, well-prepared legal advisors there would have been far more rapid implementation of the Act and quite honestly, in my opinion, there would have been less litigation as issues would have been negotiated and discussed early on by people on equal footing.

Villages in this state were hindered by the fact that the Bureau of Indian Affairs limited the use of the Indian Child Welfare grants. They would not allow them to be used explicitly for either purchasing legal representation or for training. It is meaningless tell to a small community to "use the money to develop a child welfare program" without providing training for governmental leaders and members of the village regarding what a child welfare system is and does, the rights a village has in these proceedings, and what authority it has. Taking such a course dooms the Act to be less effective than it could be. I understand those policies have changed over time, but not sufficiently. There is still inadequate funding for tribes to acquire the representation and training that they need to fully accomplish the purposes of the Act.

In addition to an overall lack of adequate funding, the extremely competitive grant process administered by the Bureau of Indian Affairs had negative effects. This process did great disservice to tribes and Indian organizations. In 1980 an informal working group of non-profit associations concerned about Indian child welfare was meeting regularly. That group called itself the Alaska Native Child Welfare Task Force. State representatives took part as ex-officio members and participated in the subsequent formation of the Alaska Native Child Advocacy Board (ANCAB). ANCAB disintegrated and discontinued meetings in 1983. The single most important cause of its disintegration was the competitiveness of Indian Child Welfare Act grants. Over time, meetings were dominated more and more by discussions related to securing and writing grants, and exchanging information regarding Bureau of Indian Affairs grant expectations. It was impossible to sustain discussion about child welfare policy when there were constant questions concerning meetings and what technical assistance was and was not available. As the associations began to disagree significantly over whose proposal and how many proposals should be funded, it simply became intolerable to continue to meet, and, quite honestly, was not a responsible use of limited travel funds. Only recently has a new group formed to focus again on Alaska Native child welfare issues. This group is forming for many reasons, but dominant among them is the impetus provided by the state in the state-tribal negotiations. History has shown us that the Act will never be as successful as Congress wants it to be if tribes are not funded to carry out the Act's purposes.

In a related area, it is essential that states and tribes be independent of each other in meeting obligations to the federal government. It is neither fair, nor does it achieve good social policy, for the federal government to require either a state or tribe to impose on the other the requirements of the federal government in order for either to achieve funding. Current requirements often contribute unnecessarily to divisiveness between states and tribes, add to the level of distrust, and do not achieve the purposes of the Act.

With regard to the details of the Act itself, I am aware that proposed amendments are coming to this committee. As one who has offered continuing legal education courses to Alaskans lawyers and taken part in training on a national level for legal services attorneys representing tribes, I urge you to be cautious in amending the Act. I think it is important that you focus on those issues of greatest national significance and not try to fix every bad case or every questionable outcome through amendments. To do so will simply lead to another round of litigation. A state court which chooses to ignore the plain language of the law will not be deterred by changes in the law. However, for the majority of states which have made a serious effort to honestly interpret and implement the law, every change will spur a whole new round of questions about "What does this mean?" A law in effect only eight years is a very new law and we should be very cautious of a "kitchen sink" approach to change.

In addition, as you look at proposed amendments, I think you should be very cautious about imposing obligations on tribes that they may not be prepared to meet. In providing training for attorneys representing non-Alaskan tribes, I was impressed by the number of those attorneys who indicated that they worked for tribes that have made a conscious decision that it is in the tribes' interests to rely on the state court to handle involuntary child custody proceedings. Those tribes decided that child welfare cases are divisive and too expensive' requiring a full infrastructure that the tribe feels it cannot afford. Instead, they made the decision that it is a better use of limited resources to use their funds to work with state officials, to intervene when necessary to cause state officials to make better decisions than might otherwise be made, and to develop services within their own tribes in order that the need for involuntary intervention in a family will be reduced. To impose exclusive jurisdiction on a tribe which currently has concurrent jurisdiction limits their options and should be avoided.

Finally, in cautioning you against making many changes in the law, I think it is important to consider that merely changing laws or strengthening laws will never fully achieve the purposes of the Indian Child Welfare Act. We can tinker with and add to this law year after year after year, and the plight of Indian children and Indian families and Indian tribes will not be improved until the socio-economic condition of the people in those tribes is improved, until their status within our country is improved. Poverty, unemployment, alcoholism, suicide, and a plethora of other human problems that affect Indian children and families disproportionately must be reduced if the goals of the Act are to be achieved. In my opinion, you should look at the other ways in which Congress addresses its trust obligation to Indian people throughout this country, including Alaska.

Preventing unwarranted or improper intervention in Indian families is an important part of achieving more stable and valued tribes and Indian families, but the Act cannot accomplish the job alone. I urge you to look to the policies that support all the children in this country, particularly Indian children and families and Indian tribes, to achieve that full purpose. We must examine all of the ways in which support for Indian tribes and Indian people have been reduced, and reconsider those policies as well as those embodied in the Indian Child Welfare Act if we are going to achieve the purposes of the Act.

Attached for your information is an addendum to the testimony of Myra M. Munson who testified before the Senate Select Committee on Indian Affairs on November 10, 1987.

The addendum provides updated statistics for Native and non-Native CPS cases and comment on other statistics presented to the committee at the hearings.

State of Alaska

FY 87 Statistics/Native and Non-Native CPS Cases

- 10,105 children received Child Protective Services in FY87.
- 2,983 or 29.5% of children receiving protective services were Native children. This figure does not include the number of unknown who may be Native. If it is assumed that about 30% of the CPS cases with unknown race are Native, then the number of Native Children is probably 3,049 or 30% of the total figure.
- 2,019 or 67.7% of Native children served were in their own homes.
- 964 or 32.3% of total Native children served were in out-of-home placements, including placements in the homes of relatives.

- 322 or 33% of Native children served outside their homes were served in the homes of relatives (excluding relatives who were licensed foster parents.)

- 387 or 40% of Native children placed outside their homes were served in foster care, including relatives who were licensed foster parents.

- 795 children (both Native and non-Native) served in FY87 were in foster care. 387 or 48.7% of this total where Native children.

- Native children comprised 43% of children placed in out-of-home care in FY87.

5/RW/testimony2/

The article by Mike Walleri in the October, 1987 AFN Newsletter and the November 10, 1987 testimony of Alfred Ketzler before the Senate Select Committee on Indian Affairs present inaccurate information concerning the placement of Alaska Native children served by the State's child protection system. The inaccuracies appear to result from a misinterpretation of data from two sources and inaccuracies in the presentation of data by Alaska's Division of Family and Youth Services in one of the source documents.

The primary source for data presented in the article seems to be a Division of Family and Youth Services memorandum on Native children in foster care. The source for the data presented in Mr. Ketzler's testimony on the number of Alaska Native children in out of home care appears to be the DFYS FY86 Annual Report. Mr. Ketzler also apparently relied on the data from the DFYS memorandum concerning racial composition of foster homes in which Native children were placed by the state.

Both Mr. Walleri and Mr. Ketzler compare DFYS data with data from a 1976 survey by the Association on American Indian Affairs relating to placement of Alaska Native children. Each draws conclusions based on these comparisons. However, though both gentlemen utilized the same number (393 children) from the survey, the number is indicated as representing different groups of children. In Mr. Walleri's article the number is said to represent the number of Alaska Native children in foster care in 1976. In Mr. Ketzler's testimony the number is said to represent the total number of Alaska Native children in any type of out of home placement during 1976. Without access to the survey, it is not possible to say with certainty what the number actually represents. However, based on a comparison with State figures on the number of Alaska native children in foster care and out of home care it appears more likely to represent the group of children placed in foster care during 1976.

The DFYS memorandum concerning racial characteristics of children in foster care and foster parents was prepared on December 5, 1986. The memo attempted to respond to questions raised in meetings with tribal organizations concerning racial characteristics of foster parents with whom Native children were placed. The memo is flawed in its failure to accurately explain the data presented and its limitations. The data presented in the memorandum represents a crosstabulation of the racial characteristics of foster children and foster parents for those foster care placements for which payments were authorized during the period. It does not represent individual children placed during that time. This gives a multiple count of individual children based on the frequency of payment authorizations (payments are normally authorized monthly but authorizations for a single child may occur more frequently e.g. if a child changes placements during a month). Thus a child in foster care placement for one year would be represented a minimum of twelve times in the data. This gives an imprecise approximation of the racial composition of both children in placement and foster parents because of the multiple counting. However, it is the closest approximation of the desired comparison possible because of the inherent limitations of the Division of Family and Youth Services' information system. Unfortunately, these limitations were not explained in the memorandum and the data was misinterpreted by Mr. Walleri. In addition, the data presented represented a nineteen and one-half month period rather than a calendar year as Mr. Walleri's article indicated.

An accurate comparison of the type attempted by Mr. Walleri would have been between the number of Alaska Native children placed in foster care during 1976 and the number placed in foster care during a more recent one year period. Such a comparison would show the number during recent years to be slightly below the number of children in placement at the time of the survey (393 in 1976 according to the survey and 355, 309, 348, and 387, in FY84, FY85, FY86, and FY87 respectively according to DFYS' annual reports). This shows a decrease in placements despite the 28% increase in the population of Alaska Native children rather than an increase of 218% as calculated by Mr. Walleri. It also leads to a different representation of the State's effort to achieve the goals of the ICWA than was presented by Mr. Walleri based on his incomplete understanding of the data.

Mr. Ketzler's testimony that the number of Alaska Native children placed outside their homes had increased by 256% in the ten years from 1976 to 1986 also seems based on a misinterpretation of available data. Mr. Ketzler is correct in representing the number of Alaska Native children placed outside their own home in 1986 as 1,010. However, he compares this number with what apparently is only a portion of the total number of such children in 1976 -- apparently those placed in foster care. State data on the total number of Native children placed outside their homes is not available for 1976. However, data for 1978, the earliest year for which data is available indicates, that 934 Native children were placed outside their own homes. It is likely that the number of Native children in out of home placements in 1976 is nearer the 1978 level than ~~the 393~~ indicated in Mr. Ketzler's testimony. It seems probable that the number of Native children placed outside their homes has increased approximately 10% (at a slower rate than increases in the population on Native children) rather than 256% as Mr. Ketzler concluded.

Both Mr. Ketzler and Mr. Walleri misinterpreted data presented in the December 5, 1986 DFYS memorandum in drawing conclusions concerning likelihood of a Native child being placed in a Native foster home. Each interpreted data on placements as representing data on individual children and did not include data on those placements for which the foster parent race was unknown. In the Bethel area, for instance, the race of children in 98% of foster home placements was Native. The race of foster parents in 59% of the placements for these children was also Native. The race of foster parents in 7% of placements for these children was Caucasian and the foster parent race was unknown in 32% of these placements. However, most of the licensed foster parents in the area are Native. It is likely then that a substantial portion of those placements in which the foster parent race is unknown are actually placements with Native families. This means that the likelihood of placement of a Native child in a Native foster home is greater than presented in the testimony of Mr. Ketzler and the article by Mr. Walleri and greater than indicated in the source from which their information was taken.

Though not noted by either Mr. Walleri or Mr. Ketzler, it is important to be aware that a significant increase has been made in the number of Native children who remain in their own homes while receiving protective services. In FY78 only 56% of Native children were served in their own homes, but by FY 86, 67% remained in their homes while receiving protective services.

OCT 21 1987

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

Document No. 87-114

October 20, 1987

The Honorable F. Kay Wallis
Alaska State House
P.O. Box V
Juneau, AK 99811

Dear Representative Wallis:

Thank you for your recent inquiry and interest concerning placements of children in State custody. There are inherent deficiencies in the information system of the Division of Family and Youth Services which limit our ability to fully respond to your inquiry or to provide historical information on children in placement. Despite these limitations, I believe the following information provides a useful profile which addresses the thrust of your inquiry.

According to the most recent population estimates available (Alaska Population Overview, Alaska Department of Labor, September 1985), [redacted] (75,000 of 523,000) were identified as American Indian, Eskimo, or Aleut. Although total population figures have been updated, no additional information concerning racial or ethnic composition of the total has been provided. Presumably the 1984 estimate is still representative of the racial makeup of Alaska's population.

Unduplicated counts of children taken into State custody and placements of children are readily retrievable [redacted] basis. Although these point in time counts are limited in a number of ways, they provide a profile of client characteristics which is adequately representative for most purposes.

wrong! look at [illegible]

Enclosed is a table from the most recent Annual Report of the Division of Family and Youth Services displaying the [redacted] at the end of Fiscal Year 86. As the table shows, [redacted]

To provide more recent information on children in custody of the Department, a special computer analys[redacted]

The table below provides a breakdown of the placements of Native children in out of home care on September 30, 1987. As the table shows, the most frequent type of placement for Native children was in the home of a relative. Thirty-six percent (317) of these children were in the home of a relative. In 26 of these instances the relatives were acting formally as foster parents. The second most frequent placement for Native children was non-relative foster care where 287 or 32% of Native children were in placement.

Out of Home Placements of Native Children
Receiving Child Protective Services
September 30, 1987

Placement Type	Number	Percentage
Relative Home	291 no payment	32.7
Relative Foster Home	26	2.9
Non-relative Foster Home	287	32.2
Emergency Shelter	79	8.9
Adoptive Home	42	4.7
Hospital	16	1.8
Residential Care Facility	12	1.3
Other	138	15.5

To provide you with as clear an indication as possible of the placement of Native children, a special computer analysis was also performed to compare the race of foster parents with the race of children placed in their homes. Again because of inherent deficiencies, the period for which this information can be tracked is limited. Usually the information is available only for the most recent three month period; however, because certain normal procedures [redacted]

[illegible] on figures for 1987 Jan – Sept parents chose not to record their race. The table below indicates the racial composition of children in placement and foster parents with placements during the period.

Race of Children in Foster Homes

Foster Parent Race	Native	Caucasian	Other	Unknown	Total
Native	269	25	8	15	317
Caucasian	171	280	41	53	545
Other	64	72	60	38	234
Unknown	101	111	19	41	272
Total	605	488	128	147	1,368

In summary, the table shows that during the period studied, only 23% of foster parents were Native compared to 44% of children placed in foster care. Of Native children placed in foster care, 44% were placed in Native foster homes. This seems to indicate substantial effort to place Native children in Native foster homes despite an insufficient number of Native homes to meet the need for such placements.

Limitations in these data preclude definitive conclusions based on the data. However, the information seems to indicate that when Native children are placed out of their homes, most are placed in home-like settings and most of these are placed either in the homes of relatives or in Native foster homes. Nonetheless, a substantial number of Native youth are placed in non-Native homes. In part this is due to an insufficient number of Native foster homes. However, there a number of factors influencing placement patterns such as differences between urban and rural areas (for example, in Anchorage only 33 of 390 or 8% of foster homes which had placements during the period were Native homes, while nearly one-third of the Native children placed in foster care were in Anchorage).

Obviously, these are complex issues which are not easily resolved. I hope this information is helpful and I welcome further discussion of these issues.

Sincerely,

Myra M. Munson

Myra M. Munson
Commissioner

Enclosure

1986 yr Totals

TABLE 5

DEMOGRAPHIC CHARACTERISTICS OF CHILDREN

Served by Living Situation at the End of the Period

	GENDER *		ETHNIC GROUP **					AGE ***		
LIVING SITUATION	MALE	FEMALE	ALASKA NATIVE	BLACK	CAUCA-SIAN	ASIAN	OTHER	4 Yrs. -Less	5-12	13-19
OWN OR PARENT HOME	3184	3765	2019	240	3464	70	1145	2064	3087	1793
RELATIVE HOME	234	302	338	12	158	5	22	152	215	168
NON-RELATIVE HOME	38	92	31	4	73	1	20	21	15	94
[illegible]	319	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	57	187	[illegible]	312
EMERGENCY SHELTER	135	138	310	13	127	1	23	76	84	114
RESIDENTIAL CHILD CARE FACILITY	49	77	55	4	58	0	5	8	28	89
ADOPTIVE HOMES	30	[illegible]	[illegible]	13	32	1	[illegible]	[illegible]	[illegible]	[illegible]
ALL OTHERS	75	93	84	13	72	2	24	41	39	102
TOTALS	4084 45%	4938 55%	[illegible]029 34%	323 3%	4266 47%	87 1%	1278 14%	2585 29%	3761 42%	2672 30%

est. 90% are Foster care payments

majority of Relative placement ~~[illegible]~~ Foster Care payments.

47% Native children

× — 389 = 737

53%

64% Native

49% 1010 — 83 802 17 133 + 1035 = 2045

51%

* Gender of 200 individuals was not reported

** Ethnic Group of 212 individuals not reported

*** Age of 204 individuals not reported

minus in-home services

MEMORANDUM State of Alaska

TO: Connie J. Sipe
Acting Commissioner
Department of Health and Social Services

DATE: December 5, 1986

FILE NO: 842/6967

TELEPHONE NO: 465-3170

THRU:

SUBJECT: Re: Native Children in Foster Care

FROM: Michael L. Price
Director
Division of Family and Youth Services

In 1984, 14% (7,5000) of the State's population, 523,000 were identified as American Indian, Eskimo, or Aleut (1). In FY 86 the Division of Family and Youth Services (DFYS) clientload of 19,211 included 6,256 (32.6%) Alaskan Native clients.

In response to questions raised in the ICWA and AFN meetings, the following information has been obtained from the Division of Family and Youth Services computer system in regard to Native children in out-of-home care. The number of children reflects a cumulative total of individual children who have been in foster care during the past 540 days or within the past eighteen months as of November 14, 1986. The information cross-references foster parent race with foster child race by field office, including youth services offices and statewide totals.

Extreme caution is recommended in drawing conclusions from the information presented because of inherent limitations of the data. For example, one-fifth (21%) of children in foster care were in placements for which no race was recorded in the data system. Also the data are insufficient for analysis of the impact of service exigencies (such as out of community placement for specialized care) or the race of foster care placements. Nor are the data analyzed in comparison with demographic and socio-economic trends which influence service need and delivery. It is clear that further information and analysis is needed in order to formulate valid conclusions. Within these limitations, the following information is presented.

The data depicts statewide totals and placements for several of the larger social service field offices specific to the cities listed.

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(1) Alaska Population Overview, Alaska Department of Labor, September 1985, page 3.

STATEWIDE

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

		FOSTER CHILD RACE				
		Caucasian	Native	Other*	Unknown**	Total Placements
FOSTER PARENT RACE	Caucasian	595	403	80	30	1,108
	Native	40	489	12	19	560
	Other*	128	94	126	39	387
	Unknown**	214	264	32	61	571
	Total Children	977	1,250	250	149	2,626

* "Other" includes races other than caucasian or Alaskan Native, i.e., Filipino or Black.

** Unknown numbers are the result either of foster parents choosing not to record their race or workers not knowing the race of a child when the child enters custody and then not recording the race later.

Points of interest are:

[redacted]
2. 39% of Native children are placed in Native foster homes.
3. 32% of Native children are placed in Caucasian foster homes.
29% of " " ~~we~~ they don't know about.

* *

BETHEL SOCIAL SERVICES

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

		FOSTER CHILD RACE		
		NATIVE	UNKNOWN	TOTAL
FOSTER PARENT RACE	Caucasian	9	0	9
	Native	77	2	79
	Unknown	42	0	42
	Total	128	2	130

Points of interest:

24% Licensed Native homes in Bethel.
40% Licensed Native homes in villages.
8% Licensed Caucasian homes in Bethel and villages.

1. 98% of children in placement are Native.
2. 59% of children are in Native foster homes.
3. 7% of Native children are in Caucasion foster homes.

34% Unknown

ANCHORAGE SOCIAL SERVICES

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE				TOTAL
	Caucasian	Native	Other	Unknown	
Caucasian	180	92	30	30	330
Native	15	67	0	19	96
Other	41	33	49	39	152
Unknown	83	71	17	61	229
Total Children	319	263	58	149	807

Points of interest:

1. 43% of children in placement are Native.
2. 25% of Native children are in Native foster homes.
3. 35% of Native children are in Caucasian foster homes.

* *

BARROW

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE
	Native
Caucasian	15
Native	27
Other	3
Total Children	45

* *

FAIRBANKS

(Cumulative unduplicated total during the period April 1, 1985 to November 14, 1986.)

FOSTER PARENT RACE	FOSTER CHILD RACE			
	Caucasian	Native	Other	TOTAL
Caucasian	99	47	13	159
Native	1	63	0	64
Other	24	13	30	67
Unknown	17	15	0	32
Total Children	141	138	43	322

Points of interest:

1. 42.9% of children in placement are Native.
2. 46% of Native children are placed in Native foster homes.
3. 34% of Native children are placed in Caucasian foster homes.

LIST OF AREAS OF CONCERN FOR POTENTIAL DRAFTING INTO A MODEL ALASKA ICWA AGREEMENT

An overall goal was agreed upon: To promote communication and coordination between the State and villages from the first point in time that a child in need of protection comes to the attention of either the State or the village.

[The items numbered 1-4 were chosen as the first four priorities. Other items are listed, but have not been placed in any order of priority.]

1. Emergency
    - reports
    - removals
2. Identification
    - child as Indian
    - tribal membership/(dual +)
    - expert witnesses
    - tribal order of placement preference
    - customs of tribe
    - tribal courts
3. Notice
    - official agent
    - private adoption
    - placement/custody changes
    - voluntary/involuntary
4. Placement
    - when
    - where
    - by whom (case planning)
    - extended family

Investigations
  - procedures

Foster Care
  - list of children
  - licensing
  - list of homes (Native)

Good Cause to Contrary

Tribal Court Orders

Intervention
  - when
  - where
  - by whom

Remedial Services

Jurisdiction

Full Faith & Credit

Training
  - employment standards (State/Tribal)

Village Resource List

Inter-Tribal Agreements

Confidentiality (State and Tribal)
  - access to records
  - standards for discl

Testimony of Social Workers

Role of Associations vs. Villages

Native Organizations and State want:
  - priorities set
  - resolution prior to next meeting - comments
  - at next meeting, highly focused to try to develop points of agreement

The division intends to complete more detailed analysis of all children in care during the next year which will include comparison of service delivery with demographic and socio-economic trends and the impact of service contingencies on service delivery.

We are very hopeful to improve placement ratios through the federal grant recently received which targets increasing the ratio of placements of Native children in Native homes. The project includes developing written agreements with Tribal Social Service agencies to enhance the recruitment of Native foster and adoptive homes. Early involvement of these agencies will increase the likelihood of placing Native children in Native homes. The grant will enable the Division to develop and refine a tracking system for all children in need of permanent planning. Statewide teleconferencing and inter-agency meetings will be utilized to develop agreements and improve service delivery. These meetings will be coordinated with the current effort to develop the statewide model for tribal agreements.

MLP:MAH:lh:pvp

TESTIMONY OF CRAIG J. DORSAY, NATIONAL COORDINATOR OF THE INDIAN LEGAL SERVICES PROGRAM TASK FORCE ON THE INDIAN CHILD WELFARE ACT.

I. INTRODUCTION

My name is Craig J. Dorsay. I am presently director of the Native American Program of Oregon Legal Services, and I also contract with a number of Indian tribes on a private basis. My practice specializes in the field of Indian law and I have specialized primarily within this field in handling Indian Child Welfare Act matters. In the last seven years I have handled over 500 Indian Child Welfare Act cases in at least 22 different states. I have appealed ICWA decisions to Courts of Appeal in numerous states including Alaska, Washington, Oregon, California, Arizona, New Mexico, and Utah. In addition, I have initiated ICWA litigation in several federal courts to test implementation of the Act by both states and the federal government.

During my three years with the Navajo Nation as Assistant Attorney General in charge of Human Services I set up and created an ICWA response team so that the Navajo Tribe could respond and participate actively in state ICWA proceedings. My responsibilities also included negotiating Indian Child Welfare state-tribal agreements with the states of Arizona and New Mexico and the preparation of ICWA grants on behalf of the tribe for operation of tribal child and family service programs. I supervised four other tribal attorneys who handled ICWA cases on a part-time basis and contracted with local attorneys in fifteen different states to act on behalf of the Navajo Nation in those states where the tribe did not have an attorney licensed to practice.

In addition, I have conducted over 75 training sessions on the Act with a wide variety of audiences including state and tribal judges, state, tribal and federal social workers, private attorneys, and a large number of community groups and lay people interested in operaton of the ICWA. I have also published a number of articles on the Indian Child Welfare Act and several handbooks on operation of the Indian Child Welfare Act in state and tribal courts. It is safe to say that I have discussed the Indian Child Welfare Act with a large number of people in the country and probably have more personal experience handling ICWA legal proceedings than any other attorney.

II. OVERALL IMPELEMENTATION OF THE INDIAN CHILD WELFARE ACT.

The Indian Child Welfare Act is a complex piece of legislation that is made even more complicated by virture of the fact that the original Act was changed and amended several times prior to enactment. Not all sections of the Act were conformed to avoid later interpretation problems. The ICWA is the first statutory reflection of the jurisdictional interplay between state, federal, and tribal interests. Resoultion of these conflicts has previously taken place only in court proceedings addressing natural resources and taxation issues. While the ICWA is recognized as being consistent with the modern trend in child custody and social work practice, it has encountered a great deal of resistence by virtue of its Indian content and the intrusion on what are thought to be state concerns rather than from any substantive objection to its provisions or the effect of the Act on best interests of the Indian child. The recent Halloway decisions from the Utah Supreme Court and the Navajo tribal court system is indicative of this conflict. There was substantial public outcry over the operation of the Indian Child Welfare Act when the Utah Supreme Court overturned an adoption of a Navajo child by a non-Indian couple after the child had been in their home for the six years while custody was being contested in the court system. While the outcry was based on the injustice that would befall the child if he were removed from the home he had known for such a long time, the debate ignored whether the Navajo Tribal Court could operate to protect the child's best interests to the same extent as a state court. The recent settlement of the Halloway case in a manner which protected the Navajo child's emotional ties to his non-Indian parents and at the same time protected his cultural and tribal ties with his natural family and the Navajo Nation shows that the initial outcry from Utah Supreme Court reversal was unwarranted and that the Indian Child Welfare Act indeed can operate to reach a result that was most consistent with protecting all facets of the childs emotional and physical well being.

Cases interpreting the Indian Child Welfare Act can be split into two distinct camps. One camp interprets the Indian Child Welfare Act as a broad remedial piece of legislation consistent with the federal governments trust obligation to protect Indian tribes and children, and analyzes ICWA provisions in a manner consistent with achieving the objectives and goals of the Act. The other camp considers the Indian Child Welfare Act an unwarranted intrusion upon state perogatives in the field of child custody and tends to interpret the Act narrowly so that it disrupts state juvenile ~~p~~rocedures as little as possible. Because the interpretation of the ICWA has been left to state courts - the very body which Congress noted its legislative findings to the ICWA as responsible for past improper child custody proceedings involving Indian children - there has been a wide range of decisions under the Indian Child Welfare Act. This widespread responsibility for interpreting the ICWA has caused great trouble for and financial drain to Indian tribes because the tribes cannot be certain how the Act will be perceived in each state, and therefore must expend the financial resources necessary to defend tribal interests and to advocate proper interpretation of the ICWA in every state where the Act is raised as an issue. Because of the ambiguities inherent in the language of the Act as it presently exists, there is considerable opportunity for a diverse range of interpretations of the Acts intent and purposes.

Implementation of the Act on a day-to-day basis has also been somewhat inconsistent. Many tribes have a positive relationship with neighboring state and county social workers on protecting Indian children who have become before the state court system. Both state and tribal workers now work together in joint case planning and case service provision in order to offer the best services designed to keep Indian families together or to work towards reuniting Indian children with their families.

Substantial problems still exist, however, in many states regarding the Indian Child Welfare Act and its implementation. Some states and/or counties are still hostile toward implementation of the Act and either do not cooperate with the tribe and the provision of services to Indian children or attempt to send all children back to the reservation regardless of what might be best for that child. Confusion also still exists surrounding the jurisdictional status of Indian tribes and whether state social workers can be required to come on reservations to testify in tribal courts in order to protect Indian children and ensure that they are not returned to abusive or neglectful homes. These technical considerations operate to the detriment of Indian children since they all cause delays in resolution of problems involving Indian children.

Funding is a critical concern underlying effective implementation of the Indian Child Welfare Act. It is a sad fact that funding has never been more than one quarter of the amount initially recommended by Congress as necessary to effectively implement the Act, and this amount has remained stable or declined over the last few years. The ICWA places a great deal of responsibility on Indian tribes in operating Indian child and family service programs and in responding legally to state ICWA proceedings. In some ways the ICWA has impacted detrimentally on Indian tribes because the great responsibility placed on tribes cannot be carried out with the woefully inadquate funding that has been made available to date by the federal government. It is clear that if Indian tribes are to be given the same level of responsibility under the Indian Child Welfare Act that state courts and social workers must comply with, they must also obtain equal amounts of funding in order to carry out these responsibilities.

In my opinion the Indian Child Welfare Act has been a noble idea that has succeeding spectacularly in some areas such as in raising the consciousness of non-Indian courts and state personnel about the existence of Indian tribes and the legitimate interests that Indian tribes have in their children, and has been a failure to date in other areas mainly due to the lack adequate funding and the lack of federal follow through necessary to fully achieve the goals and objectives set forth in the Act. For this reason I believe amendments are critically needed at this time, both to clear up problems that exist in day-to-day implementation of the Act and to overturn or clarify judicial rulings that have tended to emmasculate the underlying intent and purposes of the ICWA. Enough experience has been gained during the last ten years that the necessary changes can be pinpointed with a great deal of accuracy. I would therefore recommend that this committee and congress seriously consider the adoption of Indian Child Welfare Act amendments at the earliest available opportunity.

III. PROPOSED AMENDMENTS.

My prepared testimony at the 1984 oversight hearings on the Indian Child Welfare Act on behalf of the Navajo Nation remains relevant today. I will not go into great detail about the proposed changes that are necessary in the Act at this time because these changes should be discussed in light of specific proposed amendments. I am including for the committee's information a proposed ICWA amendments drafted by tribal and legal service attorneys in the northwest United States, as well as two letters that I have previously submitted to the committee which explain the need for changes in specific sections of the Act and discuss the rationale for the changes that have been suggested. In some cases my comments are directed at the proposed ICWA amendments drafted by the Association on American Indian Affairs. I have consulted with tribal and legal services attorneys throughout the northwest and most of them agree with the proposed amendments attached to this testimony. The Navajo Nation, with whom I still work under contract on ICWA matters, also supports the proposed changes. I would suggest that these changes be considered the basis for further discussion in terms of specific amendments to the Indian Child Welfare Act.

One of the critical areas for proposed amendments to the Act is in the Findings, Policies, and Definitions sections of the Act. This is because those State Courts which have narrowly construed the Act have used these sections to avoid applying the Act at all. Definitions, Findings, and Policies must therefore be clarified to make it crystal clear what situations the ICWA should be applied to and what situations should be excepted. Aside from these sections we have proposed amendments primarily in the Jurisdiction, Invalidation, Placement, and Funding sections of the Act. Some sections of the Act are clear, simple, and work well. Others are confusing, contradictory, and have been interpreted to the detriment of Indian people and Indian families. I would hope that the proposed changes submitted with my prepared testimony will serve to alleviate the concerns that have arisen to this date with implementing the ICWA. Funding necessary to achieve full implementation of the ICWA is also a critically vital and independent concern.

These proposed amendments are intended for the committee's information and education. They are not yet a final product. Since it is anticipated that ICWA amendments will be submitted in bill form for several months, it is our intent to meet with as many tribal attorneys and tribal representatives as possible to discuss the proposed draft attached to this testimony, and to draft further provisions that will achieve the full intent and purposes of the ICWA. We would appreciate any and all comments on these provisions, and hope that we can come up with a product best suited to the original intent of Congress in adopting the ICWA manner which works for tribes, states, and the federal government.

Thank you for the opportunity to address the committee. I look forward to furtner action by Congress on this critically important matter.

SECOND SUBSTITUTE HOUSE BILL NO. 480

State of Washington 50th Legislature 1987 Regular Session

by Committee on Ways & Means/Appropriations (originally sponsored by Representatives Brekke, Winsley, Moyer, Scott, Wang, Leonard and Brough; by request of Department of Social and Health Services)

Read first time 3/9/87 and passed to Committee on Rules.

AN ACT Relating to Indian child welfare; amending RCW 13.04.030, 26.33.080, 26.33.090, 26.33.110, 26.33.120, 26.33.160, 26.33.240, 26.33.310, 74.13.031, 74.13.080, 74.15.020, and 74.15.090; adding a new section to chapter 13.34 RCW; adding a new section to chapter 74.15 RCW; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. Section 2, chapter 160, Laws of 1913 as last amended by section 29, chapter 354, Laws of 1985 and RCW 13.04.030 are each amended to read as follows:

The juvenile courts in the several counties of this state, shall have exclusive original jurisdiction over all proceedings:

(1) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(2) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170, as now or hereafter amended;

(3) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210, as now or hereafter amended;

(4) To approve or disapprove alternative residential placement as provided in RCW 13.32A.170;

(5) Relating to juveniles alleged or found to have committed offenses, traffic infractions, or violations as provided in RCW 13.40.020 through 13.40.230, as now or hereafter amended, unless:

(a) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110, as now or hereafter amended; or

(b) The statute of limitations applicable to adult prosecution for the offense, traffic infraction, or violation has expired; or

(c) The alleged offense or infraction is a traffic, fish, boating, or game offense or traffic infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or subsection (5)(a) of this section: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(6) Under the interstate compact on juveniles as provided in chapter 13.24 RCW; ((and))

(7) Relating to termination of a diversion agreement under RCW 13.40.080 as now or hereafter amended, including a proceeding in which the divertee has attained eighteen years of age; and

(8) Relating to court validation of a voluntary consent to foster care placement under chapter 13.34 RCW or relinquishment or consent to adoption under chapter 26.33 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction.

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

(1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written

certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or other child-placing agency which is to assume custody of the child pursuant to the consent to foster care placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian

is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or other child placing agency which had assumed custody of the child pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any noncustodial parent.

Sec. 3. Section 8, chapter 155, Laws of 1984 as amended by section 1, chapter 421, Laws of 1985 and RCW 26.33.080 are each amended to read as follows:

(1) A parent, an alleged father, the department, or an agency may file with the court a petition to relinquish a child to the department or an agency. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the department or the agency to assume custody shall be filed with the petition.

(2) A parent, alleged father, or prospective adoptive parent may file with the court a petition to relinquish a child to the prospective adoptive parent. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the prospective adoptive parent to assume custody shall be filed with the petition. The identity of the prospective adoptive parent need not be disclosed to the petitioner.

(3) A petition for relinquishment, together with the written consent to adoption, may be filed before the child's birth. If the child is an Indian child as defined in 25 U.S.C. Sec. 1903(4), the petition and consent shall not be signed until at least ten days after the child's birth and shall be recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

Sec. 4. Section 9, chapter 155, Laws of 1984 as amended by section 2, chapter 421, Laws of 1985 and RCW 26.33.090 are each amended to read as follows:

(1) The court shall set a time and place for a hearing on the petition for relinquishment. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. However, if the child is an Indian child, the hearing shall not be held sooner than ten days after the child's birth, and no consent shall be valid unless signed at least ten days after the child's birth and recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Except where the child is an Indian child, the court may enter a temporary order giving custody of the child to the prospective adoptive parent, if a preplacement report has been filed, or to the department or agency to whom the child will be relinquished pending the court's hearing on the petition. If the child is an Indian child, the court may enter a temporary custody order under this subsection only if the requirements of 25 U.S.C. Sec. 1913(a) regarding voluntary foster care placement have been satisfied.

(2) Notice of the hearing shall be served on any relinquishing parent or alleged father, and the department or agency in the manner prescribed by RCW 26.33.310. If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by RCW 26.33.310.

(3) The court may require the parent to appear personally and enter his or her consent to adoption on the record. However, if the child is an Indian child, the court shall require the consenting parent to appear personally before a court of competent jurisdiction to enter on the record his or her consent to the relinquishment or adoption. The court shall determine that any written consent has

been validly executed, and if the child is an Indian child, such court shall further certify that the requirements of 25 U.S.C. Sec. 1913(a) have been satisfied. If the court determines it is in the best interests of the child, the court shall approve the petition for relinquishment.

(4) If the court approves the petition, it shall award custody of the child to the department, agency, or prospective adoptive parent, who shall be appointed legal guardian. The legal guardian shall be financially responsible for support of the child until further order of the court. The court shall also enter an order pursuant to RCW 26.33.130 terminating the parent-child relationship of the parent and the child.

(5) An order of relinquishment to an agency or the department shall include an order authorizing the agency to place the child with a prospective adoptive parent.

Sec. 5. Section 11, chapter 155, Laws of 1984 as amended by section 4, chapter 421, Laws of 1985 and RCW 26.33.110 are each amended to read as follows:

(1) The court shall set a time and place for a hearing on the petition for termination of the parent-child relationship, which shall not be held sooner than forty-eight hours after the child's birth. However, if the child is an Indian child, the hearing shall not be held sooner than ten days after the child's birth and the time of the hearing shall be extended up to twenty additional days from the date of the scheduled hearing upon the motion of the parent, Indian custodian, or the child's tribe.

(2) Notice of the hearing shall be served on the petitioner, the nonconsenting parent or alleged father, the legal guardian of a party, and the guardian ad litem of a party, in the manner prescribed by RCW 26.33.310. If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by 25 U.S.C. Sec. 1912(a).

(3) Except as otherwise provided in this section, the notice of the petition shall:

(a) State the date and place of birth. If the petition is filed prior to birth, the notice shall state the approximate date and location of conception of the child and the expected date of birth, and shall identify the mother;

(b) Inform the nonconsenting parent or alleged father that: (i) He or she has a right to be represented by counsel and that counsel will be appointed for an indigent person who requests counsel; and (ii) failure to respond to the termination action within twenty days of service will result in the termination of his or her parent-child relationship with respect to the child;

(c) Inform an alleged father that failure to file a claim of paternity under chapter 26.26 RCW or to respond to the petition, within twenty days of the date of service of the petition is grounds to terminate his parent-child relationship with respect to the child;

(d) Inform an alleged father of an Indian child that if he acknowledges paternity of the child or if his paternity of the child is established prior to the termination of the parent-child relationship, that his parental rights may not be terminated unless he: (i) Gives valid consent to termination, or (ii) his parent-child relationship is terminated involuntarily pursuant to chapter 26.33 or 13.34 RCW.

Sec. 6. Section 12, chapter 155, Laws of 1984 and RCW 26.33.120 are each amended to read as follows:

(1) Except in the case of an Indian child and his or her parent, the parent-child relationship of a parent may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.

(2) Except in the case of an Indian child and his or her alleged father, the parent-child relationship of an alleged father who appears and claims paternity may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that:

(a) The alleged father has failed to perform parental duties under circumstances showing a substantial lack of regard for his parental obligations and is withholding consent to adoption contrary to the best interest of the child; or

(b) He is not the father.

(3) The parent-child relationship of a parent or an alleged father may be terminated if the parent or alleged father fails to appear after being notified of the hearing in the manner prescribed by RCW 26.33.310.

(4) The parent-child relationship of an Indian child and his or her parent or alleged father where paternity has been claimed or established, may be terminated only pursuant to the standards set forth in 25 U.S.C. Sec. 1912(f).

Sec. 7. Section 16, chapter 155, Laws of 1984 as amended by section 5, chapter 421, Laws of 1985 and RCW 26.33.160 are each amended to read as follows:

(1) Except as otherwise provided in RCW 26.33.170, consent to an adoption shall be required of the following if applicable:

(a) The adoptee, if fourteen years of age or older;

(b) The parents and any alleged father of an adoptee under eighteen years of age;

(c) An agency or the department to whom the adoptee has been relinquished pursuant to RCW 26.33.080; and

(d) The legal guardian of the adoptee.

(2) Except as otherwise provided in subsection (4)(g) of this section, consent to adoption is revocable by the consenting party at any time before the consent is approved by the court. The revocation may be made in either of the following ways:

(a) Written revocation may be delivered or mailed to the clerk of the court before approval; or

(b) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written.

(3) Except as provided in subsection (2)(b) and (4)(g) of this section and in this subsection, a consent to adoption may not be

revoked after it has been approved by the court. Within one year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent, or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court.

(4) Except as provided in (g) of this subsection, the written consent to adoption shall be signed under penalty of perjury and shall state that:

(a) It is given subject to approval of the court;

(b) It has no force or effect until approved by the court;

(c) The consent will not be presented to the court until forty-eight hours after it is signed or forty-eight hours after the birth of the child, whichever occurs later;

(d) It is revocable by the consenting party at any time before its approval by the court. It may be revoked in either of the following ways:

(i) Written revocation may be delivered or mailed to the clerk of the court before approval of the consent by the court; or

(ii) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written;

(e) The address of the clerk of court where the consent will be presented is included; ((and))

(f) Except as provided in (g) of this subsection, after it has been approved by the court, the consent is not revocable except for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court; and

(g) In the case of a consent to an adoption of an Indian child, no consent shall be valid unless the consent is executed in writing more than ten days after the birth of the child and unless the consent is recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Consent may be withdrawn for any reason at any time prior to the entry of the final decree of adoption. Consent may be withdrawn for fraud or duress within two years of the entry of the final decree of adoption. Revocation of the consent prior to a final decree of adoption, may be delivered or mailed to the clerk of the court or made orally to the court which shall certify such revocation. Revocation of the consent is effective if received by the clerk of the court prior to the entry of the final decree of adoption or made orally to the court at any time prior to the entry of the final decree of adoption. Upon withdrawal of consent, the court shall return the child to the parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

(5) A written consent to adoption which meets all the requirements of this chapter but which does not name or otherwise identify the adopting parent is valid if it contains a statement that it is voluntarily executed without disclosure of the name or other identification of the adopting parent.

Sec. 8. Section 23, chapter 155, Laws of 1984 and RCW 26.33.240 are each amended to read as follows:

(1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of 25 U.S.C. Sec. 1915 or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child.

Sec. 9. Section 31, chapter 155, Laws of 1984 as amended by section 6, chapter 421, Laws of 1985 and RCW 26.33.310 are each amended to read as follows:

(1) Petitions governed by this chapter shall be served in the same manner as a complaint in a civil action under the superior court civil rules. Subsequent notice, papers, and pleadings may be served in the manner provided in superior court civil rules.

(2) If personal service on the parent or any alleged father, either within or without this state, cannot be given, notice shall be given: (a) By registered mail, mailed at least twenty days before the hearing to the person's last known address; and (b) by publication at least once a week for three consecutive weeks with the first publication date at least twenty-five days before the hearing. Publication shall be in a legal newspaper in the city or town of the last known address within the United States and its territories of the parent or alleged father, whether within or without this state, or, if no address is known or the last known address is not within the United States and its territories, in the city or town where the proceeding has been commenced.

(3) Notice and appearance may be waived by the department, an agency, a parent, or an alleged father before the court or in a writing signed under penalty of perjury. The waiver shall contain the current address of the department, agency, parent, or alleged

father. The face of the waiver for a hearing on termination of the parent-child relationship shall contain language explaining the meaning and consequences of the waiver and the meaning and consequences of termination of the parent-child relationship. A person or agency who has executed a waiver shall not be required to appear except in the case of an Indian child where consent to termination or adoption must be certified before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

(4) If a person entitled to notice is known to the petitioner to be unable to read or understand English, all notices, if practicable, shall be given in that person's native language or through an interpreter.

(5) Where notice to an Indian tribe is to be provided pursuant to this chapter and the department is not a party to the proceeding, notice shall be given to the tribe at least ten business days prior to the hearing by registered mail return receipt requested.

Sec. 10. Section 17, chapter 172, Laws of 1967 as last amended by section 4, chapter 246, Laws of 1983 and RCW 74.13.031 are each amended to read as follows:

The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such

parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan

for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, day care, licensing of child care agencies, and services related thereto. At least one-third of the membership shall be composed of child care providers.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and RCW 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5634 et seq.; and 42 U.S.C. 5701 note as amended by P.L. 94-273, 94-503, and 95-115).

Sec. 11. Section 2, chapter 118, Laws of 1982 and RCW 74.13.080 are each amended to read as follows:

The department shall not make payment for any child in group care placement unless the group home is licensed and the department has the custody of the child and the authority to remove the child in a cooperative manner after at least seventy-two hours notice to the child care provider; such notice may be waived in emergency situations. However, this requirement shall not be construed to prohibit the department from making or mandate the department to make payment for Indian children placed in facilities licensed by federally recognized Indian tribes pursuant to chapter 74.15 RCW.

Sec. 12. Section 2, chapter 172, Laws of 1967 as last amended by section 5, chapter 118, Laws of 1982 and RCW 74.15.020 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or developmentally disabled persons for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or developmentally disabled persons for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or developmentally disabled persons for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers or developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed;

(f) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother or developmentally disabled persons in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother or developmentally disabled persons;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(e) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(f) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(j) Facilities approved and certified under RCW 72.33.810;

(k) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(l) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a preplacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(m) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency.

NEW SECTION. Sec. 13. A new section is added to chapter 74.15 RCW to read as follows:

The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of RCW 74.15.030(2)(b) and (3) and supporting rules are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency.

Sec. 14. Section 9, chapter 172, Laws of 1967 as last amended by section 10, chapter 118, Laws of 1982 and RCW 74.15.090 are each amended to read as follows:

Except as provided in section 13 of this 1987 act, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 16. Sections 10 and 11 of this act shall take effect July 1, 1988.

TESTIMONY OF THE NAVAJO NATION BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING OF THE INDIAN CHILD WELFARE ACT

November 10, 1987

I. INTRODUCTION

My name is Anslem Roanhorse. I am the Executive Director of the Navajo Nation Division of Social Welfare. I am honored to present this testimony on behalf of the Navajo Nation regarding the Indian Child Welfare Act. In the rest of my testimony, I will refer to the Indian Child Welfare Act as the "Act" or the "ICWA".

First of all, we are pleased that you are holding this hearing. As you know, the Act was passed in 1978 and since that time the Indian Tribes and the States have carried out the intents and purposes of the Act, to the best of their abilities as Congress intended. In light of the fact the Navajo Nation has participated and worked with the terms of the Act, the Navajo Nation has gained substantial experience and has specific recommendations as to how the Act could be more effective.

However, before I get into these specific recommendations, I would like to tell you how the Navajo Nation applies the ICWA, and describe related problems which impede our ability to fully comply with the specific regulations associated with the Act.

II. THE NAVAJO ICWA PROGRAM

The Navajo ICWA program is presently a vital part of our Division of Social Welfare. Our present goal of the program is to carry out our federally mandated responsibilities in accordance with the Act in any state court dependency, adoptive or foster care proceedings involving a Navajo child. We want our children to retain their Navajo heritage. As much as possible we work to place Navajo children with their relatives and if we cannot do so, we find other Navajo families, in accordance with the placement preference of the Act.

SOCIAL WORK COMPONENT

The Navajo ICWA program has two components working together. The first is the Social Work program directed by a social worker, Virginia Hannon, in our central administrative office in Window Rock, Arizona. She coordinates the referrals we receive from the states concerning ICWA court proceedings involving Navajo children. Appendix "A" and "B" shows the demographics of children served. In 1985 we received 407 referrals. In 1986 we received 334 referrals. Each referral must be verified to determine if the child(ren) is Navajo, that is, if he/she is enrolled or eligible for membership with the Navajo Nation. In order to be enrolled, a child must possess at least one-fourth Navajo blood.

We also have to determine where the child's family comes from, that is, from which agency. The Navajo Nation is divided into five regional divisions called "agencies" (Appendix "C"). The Central Office Coordinator assigns the incoming ICWA case(s) to the Agency Social Worker who handles all the ICWA cases in the specific area of the Navajo Nation they are assigned. Our ICWA social workers are Ben Claw of Fort Defiance Agency, Donna Toledo of Crownpoint Agency, Truman Davis of Chinle Agency, Delores Greyeyes of Tuba City Agency and Virginia Polacca of Shiprock Agency. These social workers provide the first contact for the Navajo Nation with the family involved in the state proceeding and make an independent assessment of the case.

LEGAL COMPONENT

The second component of the Navajo ICWA program is the legal program. One attorney and a tribal court advocate in the Navajo Department of Justice handle all legal representation on the ICWA cases for the Navajo Nation. Violet A. P. Lui is the attorney and Louise Grant is the tribal court advocate.

As you will note from the attached demographics our division gets numerous referrals from many states, from across the United States, all the way from Alaska to Texas to Pennsylvania. Naturally, our legal counsel are not licensed in all fifty states, therefore, the tribe must contract with attorneys who are licensed to practice in the particular state where assistance is needed when we need legal representation. The Navajo Nation is fortunate in having the excellent services of Craig J. Dorsay in the Oregon and Washington area, Elizabeth Meyer in Colorado, Katherine Anderson in California, Brian Sexton in New Jersey, Mary Ellen Sloan in Utah, to name but a few. Mr. Dorsay used to work with the Navajo Nation and continues to consult with the Division of Social Welfare on ICWA issues and other matters, if and whenever necessary.

NAVAJO ICWA PROCESS

Our Navajo social workers and legal counsel work together on each ICWA case using the following steps for each case:

- Contact our state agency counterparts from whom the referral was received, including the state social worker and the county and/or District Attorney or the Assistant Attorney General.
- Determine the status of the ICWA case in the state court proceedings and whether or not there is a plan developed to reunite the Navajo child with his or her Navajo family.
- If it appears that placement with Navajo relatives is necessary, our social workers do an exhaustive search for suitable relatives

with whom to place the child.

- Gather and analyze facts to decide if we have exclusive jurisdiction of the child.
- Decide whether or not a particular case should be transferred to the Navajo courts.

Sometimes, we only intervene and monitor the state's work with the Navajo family. Our social workers can provide help by contacting urban Indian counselling programs, or just talk directly with the Navajo parents or relatives to get their perspective on what is happening. Often our social workers give help by explaining in Navajo what has happened and why the state has taken the child away.

The ICWA recognizes and protects an Indian tribe's interest in its children. My words alone cannot begin to express what this has meant in terms of dealing with the states. We have experienced many positive developments as a result of the Act. But we also have experienced problems regarding obstacles created by various state courts decisions. In addition there are administration and implementation difficulties we experience as a result of a grossly inequitable funding formula used to fund tribal ICWA programs.

III. NAVAJO - STATE RELATIONS UNDER THE ICWA

The states with which we have the most dealings under the ICWA are New Mexico and Arizona. I am pleased to report that for the most part the Navajo Nation works well with New Mexico and Arizona on ICWA cases. Some of the reasons for this are:

- Some of our workers within the Navajo Division of Social Welfare had worked for the States of Arizona or New Mexico social services department, which helps us to better understand their system. For example, I too have worked with the Arizona Department of Economic Security from July, 1986 to February, 1987 as the Assistant Deputy Director in Phoenix, Arizona.
- Over the years the States of Arizona and New Mexico social workers have come to better understand the intents of ICWA and that the Navajo social workers share the same goals and objectives for the Navajo children and their families who are involved in dependency proceedings. This common goal and objective is the safety and security of the Navajo children and to provide provision of appropriate help for the immediate family, as well as to provide for adequate placement.
- The Navajo Nation does not transfer jurisdic-

ion on every ICWA case originating from the state courts to the Navajo courts. We recognize that sometimes the child and the family will be best served in the state system, and we can provide additional help, as necessary.

- The Navajo Nation's ability to identify and locate extended relatives for placement of children is a real asset for the states, when it becomes apparent that the parents cannot or should not take the children back.

We have an Intergovernmental Agreement ("IGA") with New Mexico specifically on ICWA cases. I am including a copy of the Agreement as an Exhibit to this testimony (See Appendix "D"). It is not a perfect agreement, but it is a working document that helps each of us to better coordinate our services, in the best interest of the child.

The primary difficulty that the Navajo Nation has with the IGA with New Mexico is that we do not have adequate funds for personnel program and support services to uphold our end of the agreement. We have one ICWA social worker in each agency who is expected to cover the entire agency with an area hundreds of square miles in size. One person for such an area is just not sufficient.

A related issue under the IGA is the availability of foster care and adoptive placements within the Navajo Reservation. We have stretched our present resources to the limit to identify foster or adoptive homes, but we know we need to do more. This also requires more funds.

I know you hear this all the time, from all federal programs. However, I want to make the point that the federal funds the Indian tribes receive were inadequate to begin with and have gotten more inadequate over time. While the ICWA caseload has increased, the funding at the national level has decreased. The Congress appropriated $9.7 million in FY 1983, $8.4 million in FY 1984, $8.7 million in FY 1985, $8.4 million in FY 1986, and $8.8 million in FY 1987. I would like to point out that the Congress initially appropriated only $6.1 million for FY 1987 but it was only in June 1987 that the Congress approved $2.7 million supplemental funds.

Further, the present funding formula and award process is not appropriate to the needs of a large Indian Tribe such as the Navajo Tribe. Presently a tribe of only 15,000 members can receive the same amount we receive, but we have 200,000 members. Under the present regulations, the Navajo Tribe can only receive a maximum of $300,000 and only if it scores at least 85 points on its grant application. Because of this requirement, the Bureau of Indian Affairs did not provide any ICWA funds for FY 1985 and FY 1986. We have appealed the Bureau's actions. We feel the allocation should be based on actual need and not on a preconceived allocation formula. Further, because of the important mandates of the law, we feel the grant awards should not be given on a competitive basis but should be treated as entitled funds to Indian tribes and organizations. Finally, we feel that the Congress must increase the national appropriation to at least $15 million.

In the meantime, we have tried to be creative. For example, in one instance, one of our social workers worked with a New Mexico social worker to have pre-adoptive Navajo homes certified by the state. In that way we will have early placement of the Navajo child with a Navajo family while that case is still pending in the New Mexico courts. This is a good example of how a state and tribe can work together. But these creative efforts cannot substitute for the real needs.

Our dealings with Arizona are, as I said earlier, positive. We do not have an IGA with Arizona, but we are in the process of developing one on how we will work together on child welfare cases involving Navajo children. The main stumbling block seems to be the state's concerns about Navajo jurisdiction and Arizona jurisdiction. Another problem is the extent to which Arizona must give full faith and credit to Navajo laws, records and judicial proceedings on child custody proceedings covered by the Act. Our lawyers tell us that such concerns can be worked out, and the sovereignty of each government can remain intact. We know we have a workable agreement with New Mexico, and we can use that as precedent for other agreements with the surrounding states.

Our dealings with other states are less extensive, but we have made progress by using our contract attorneys. The cost for contract attorneys is substantial but it is necessary if the intent and provisions of the Act are to be carried out.

I referred earlier to problems we have in enforcing our rights under the Act because of obstacles created by state courts. I want to say that we have had supportive decisions by the state courts, as shown by the Utah Supreme Court's decision in the nationally publicized Halloway case.

I will emphasize to you three areas of major concerns to the Navajo Nation with the current provisions of the Act. We have other concerns with the Act, but I will not mention them specifically here. Craig J. Dorsay, who I mentioned earlier is a consultant to the Navajo Nation on ICWA issue has presented to this Committee specific suggestions for revisions to the Act. The Navajo Nation endorses the revisions proposed by Mr. Dorsay, and incorporates said revisions into this testimony.

The three areas I want to refer to are: 1) the current provisions recognizing the tribal court's exclusive jurisdiction over children who reside on or are domiciled on the reservation, or are wards of the tribal court; 2) providing for parental objection to transfer a case to tribal court; and 3) issues concerning voluntary or private placements.

It is the Navajo Nation's position that 25 U.S.C.S. Section 1911(a) works and does not require extensive change. Our exclusive jurisdiction over reservation resident or domiciled children, or children already under tribal court jurisdiction, is a fairly clear principle.

The problem of whether a Navajo parent or custodian can prevent transfer of a case to the Navajo courts under 25 U.S.C.S. Section 1911(b) is serious. It is our position that this section was not meant to defeat the tribe's interest in taking a case back to the tribal courts, on the sole objection of a Navajo parent or custodian. We agree that non-Navajos can prevent a transfer. We do not agree that a Navajo should be able to prevent the transfer by simply objecting.

The Act provides for an explicit order of preference for placements of children in any adoptive placement of children under state law and in any foster care or pre-adoptive placement, 25 U.S.C.S. Section 1915. That section seems clear enough, but the Navajo Nation is not being given early notice of private adoption proceedings. This is because some state courts mistakenly believe that the Act does not apply to private placements of children. This belief is clearly wrong. We need Congress' help to clarify this point and come up with better enforcement provisions, in order that all states may comply with this notification process.

The Navajo Nation has many other specific revisions to propose. I will not go into those proposed changes, except to repeat that Mr. Dorsay's proposed revisions are specifically endorsed by the Navajo Nation and incorporated in this testimony as if they were fully set forth. These are proposed amendments at this time. When this Committee schedules other hearings on amendments to the Act, we will submit further refinements to the present proposals.

Thank you for the opportunity to comment on the ICWA. We appreciate your efforts on behalf of all American Indians.

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Apendix "A"

DEMOGRAPHICS OF CHILDREN SERVED

Under ICWA Program for 1985 - 1986

STATES	TYPE OF SERVICES									TOTAL	AGENCY ASSIGNED				
FROM WHERE CHILDREN SERVED	Custody Dispute	Abuse	Neglect	Sexual Abuse	T P R	Foster Care	Incest	Adoption			CHINLE	FORT DEFIANCE	SHIPROCK	TUBA CITY	CROWN-POINT
Alaska	0	0	1	0	0	0	0	1		02	2	0	0	0	0
Arizona	0	12	95	10	12	0	0	8		145	21	34	4	81	5
California	0	15	29	0	5	4	0	11		64	14	10	9	29	2
Colorado	0	2	16	1	0	0	0	0		19	0	7	1	11	0
Idaho	0	0	0	0	0	0	0	4		4	0	0	0	4	0
Illinois	0	0	1	0	0	0	0	0		1	0	1	0	0	0
Kansas	0	0	3	0	0	0	0	0		3	1	0	0	0	2
Minnesota	0	0	4	0	0	1	0	0		5	1	0	0	4	0
Nevada	0	0	1	0	0	1	0	1		3	3	0	0	0	0
New Jersey	0	0	0	0	0	0	1	0		1	0	0	1	0	0
New Mexico	0	7	41	6	0	0	0	15		69	9	14	11	4	40
New York	0	0	1	0	0	0	0	0		1	0	0	0	0	1
N. Carolina	0	0	6	0	0	0	0	3		9	9	0	0	0	0
Oklahoma	0	4	13	0	0	3	0	4		24	4	0	1	15	4
Oregon	4	0	0	0	0	0	0	1		5	0	0	1	4	0
Utah	0	2	21	0	0	0	0	13		36	17	0	0	17	2
Washington	0	6	7	0	0	0	0	0		13	0	7	0	6	0
TOTALS	4	48	240	17	25	9	1	63		407	72	74	33	171	57

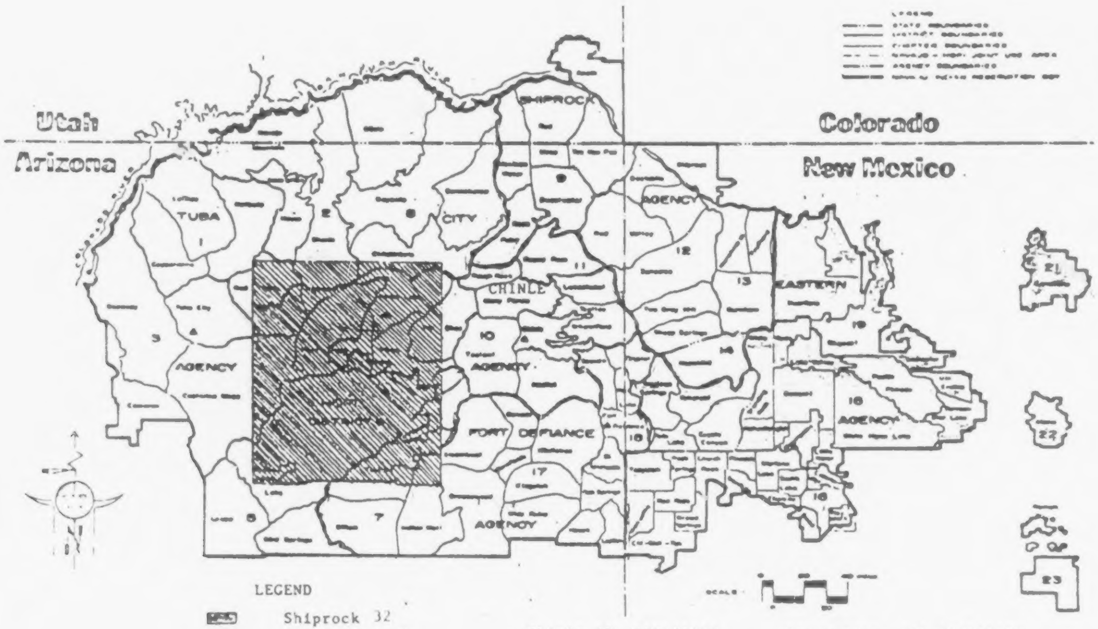
Appendix "B"

DEMOGRAPHICS OF CHILDREN SERVED

Under ICWA Program for 1986 - 1987

STATES	TYPE OF SERVICES									TOTAL	AGENCY ASSIGNED				
FROM WHERE CHILDREN SERVED	Custody Dispute	Abuse	Neglect	Sexual Abuse	T P R	Foster Care	Incest	Adoption			CHINLE	FORT DEFIANCE	SHIPROCK	TUBA CITY	CROWN-POINT
Arizona	0	26	23	13	12	4	0	10		88	5	31	8	43	1
Alaska	0	4	2	0	0	0	0	0		6	1	0	0	5	0
California	0	18	18	1	2	4	0	12		55	6	25	5	9	10
Colorado	0	10	9	1	0	0	0	2		22	0	6	1	13	0
Idaho	0	1	1	0	2	0	0	2		6	0	0	4	2	0
Illinois	0	0	1	0	0	0	0	0		1	0	1	0	0	0
Kansas	0	0	3	0	0	0	0	0		3	0	3	0	0	0
Minnesota	0	0	3	0	0	0	0	0		3	1	0	0	2	0
Nevada	0	0	1	0	0	0	0	1		2	1	0	0	1	0
New Jersey	0	2	0	0	0	0	0	0		2	0	0	0	0	2
New Mexico	1	9	44	6	0	10	0	23		93	0	19	17	6	51
New York	0	0	0	0	0	0	1	0		1	0	0	1	0	0
North C.	0	0	3	0	0	0	0	0		3	2	0	0	1	0
Oklahoma	0	0	5	2	0	0	0	0		7	4	0	1	2	0
Oregon	2	0	0	0	0	0	0	0		2	0	0	2	0	0
Utah	0	0	7	0	0	0	0	4		11	6	0	0	3	2
Washington	0	9	9	2	0	0	0	1		21	0	7	11	3	0
Texa	0	6	0	0	0	0	0	0		6	0	0	6	0	0
Missouri	0	0	0	0	0	0	0	2		2	0	0	2	0	0
TOTALS	3	85	129	25	16	18	1	57		334	26	92	58	90	68

Appendix "C"


Utah
Arizona
Colorado
New Mexico
TUBA
CITY
SHIPROCK
AGENCY
CHINLE
AGENCY
FORT DEFIANCE
AGENCY
EASTERN
AGENCY
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LEGEND

▨ Shiprock 32
■ Crownpoint 34
☐ Chinle 35
☐ Fort Defiance 36
☐ Tuba City 33

Chinle 674-5256/5257
Pinon 725-3287

Crownpoint 786-5225/5500
Alamo 505 854-2681
Gallup 505 863-9520/9529
Pueblo Pintado 505655-3219
Canoncito 505 836-4221

Ft Defiance 1808
Dilcon 657-3339
Ganado 755-3570

Shiprock
Newcomb 696-3430

Tuba City [illegible]
Kaibeto 673-3485

Shiprock 32

Mexican Water
Rock Point
Sweetwater
Teec Nos Pos
Aneth
Beclahbito
Red Valley
Sanostee
Sheepsprings
Shiprock
Two Grey Hills
Cudei
Hogback
Cove
Newcomb
Burnham
Fruitland
Nenahnezah
San Juan
Naschitti

Crownpoint 34

Coyote Canyon
Mexican Springs
Tohatchi
Twin Lakes
Becenti
Crownpoint
Lake Valley
Littlewater
Nahodishgish/Dalton Pass
Pueblo Pintado
Standing Rock
Torreon Star Lake
White Horse Lake
White Rock
Prewitt/Baca
Breadsprings
Casamera Lake
Chilchiltah
Churchrock
Iyanbito
Manuelito
Mariano Lake
Pinedale
Red Rock
Rocksprings
Smith Lake
Thoreau
Tse Ya Toh
Huerfano
Nageezi
Ojo Encino
Counselor
Canoncito
Alamo

Tuba City 33

Coppermine
Kaibeto
Lechee
Tonalea/Red Lake
Inscription House
Navajo Mountain
Shonto
Bodaway/Gap
Cameron
Coalmine Mesa
Tuba City
Bird Springs
Leupp
Tolani Lake
Chilchinbeto
Dennehotso
Kayenta
Oljato

Chinle 35

Forest Lake
Hardrock
Pinon
Tahchee/Blue Gap
Whippoorwill
Black Mesa
Low Mountain
Chinle
Many Farms
Nazlini
Rough Rock
Tselani/Cottonwood
Lukachukai
Round Rock
Tsaile/Wheatfield

Fort Defiance 36

Dilkon
Indian Wells
Jeddito
Teestoh
Whitecone
Cornfields
Canado
Greasewood
Kinlichee
Klagetoh
Steamboat
Wide Ruins
Crystal
Fort Defiance
Houck
Lupton
Oak Springs
Red Lake
St. Michaels
Sawmill

Appendix "D"

74134

INDIAN CHILD WELFARE ACT AGREEMENT BETWEEN THE NEW MEXICO HUMAN SERVICES DEPARTMENT AND THE NAVAJO TRIBE

This Agreement made and entered into this 17th day of September, 1985, by and between the Division of Social Welfare, NAVAJO TRIBE, hereinafter referred to as "the NAVAJO TRIBE," and the Human Services Department, STATE OF NEW MEXICO, hereinafter referred to as "the STATE."

I. PURPOSE AND POLICY

A. The Congress of the United States passed the Indian Child Welfare Act of 1978 (P.L. 95-608), November 8, 1978, hereinafter, referred to as the "ICWA".

B. The STATE and the NAVAJO TRIBE recognize: (1) that there is no resource that is more vital to the continued existence and integrity of the Navajo Tribe than its children; (2) that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; (3) that the STATE has a direct interest in protecting the cultural diversity of the citizens of the State of New Mexico; (4) that this agreement is entered into under the Joint Powers Agreement Act, [§§11-1-1 to 11-1-7 NMSA 1978], acknowledges the April 19, 1984 Statement of Policy signed by the Governor of the State of New Mexico and the Chairman of the Navajo Nation, and is predicated on a government to government relationship between the State of New Mexico and the Navajo Nation in a spirit of cooperation, coordination, communication and good will; (5) that both voluntary and involuntary proceedings are of critical interest to the Navajo Tribe: (a) to prevent the inappropriate cultural separation of Navajo children from their families; and (b) to insure the placement of all Navajo children in a manner which preserves the unique values of Navajo culture.

C. The STATE and the NAVAJO TRIBE agree that the primary purpose of this Agreement is to protect and further the best interests of the Navajo child. This Agreement, therefore, seeks to promote and strengthen the unity and security between the Navajo child and his or her natural family. The primary considerations in the placement of a Navajo child are to insure that the child is raised within the Navajo culture, that the child is raised within his or her family where possible and that the child is raised as an Indian.

D. The ICWA confirms the exclusive jurisdiction of the NAVAJO TRIBE over any child custody proceeding involving a Navajo child who resides or is domiciled within the Navajo Reservation and over any Navajo child who is a ward of the Navajo tribal court.

E. The NAVAJO TRIBE and STATE support the policy of Section 101(b) of the ICWA to transfer state court proceedings for foster care placement or the termination of parental rights to Navajo children not domiciled or residing within the reservation to the jurisdiction of the tribe upon petition of the NAVAJO TRIBE or the Navajo child's parent or Indian custodian, absent good cause to the contrary. The NAVAJO TRIBE and the STATE recognize that the ICWA provides either parent may object to the transfer of the proceedings.

F. Section 109(a) of the ICWA provides that States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes. The STATE and the NAVAJO TRIBE desire to provide for the orderly transfer of jurisdiction over child custody proceedings and to enter into an agreement respecting care and custody of Navajo children, in accordance with the provisions of the ICWA.

G. The STATE and the NAVAJO TRIBE support and will in fulfilling the terms of this Agreement act in accordance with the full faith and credit provision contained in Section 101(d) of the ICWA. That section requires that the United States, every State and every Indian tribe give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

H. This Agreement shall be construed in the spirit of cooperation and in a manner which protects and promotes the best interests of Indian children and the security of Indian tribes and families. This Agreement shall be interpreted in a manner which reflects the unique values of Indian culture, custom and tradition.

II. GENERAL PROVISIONS

A. The STATE acknowledges that this Agreement binds the the Human Services Department and its local offices to the provisions herein set forth.

B. This Agreement applies to any unmarried child under the age of 18 who is a member of or eligible for membership in the Navajo Tribe and is the biological child of a member of the Navajo Tribe, herein referred to as "Navajo child". The Navajo Tribal Code, 1 N.T.C. §501, defines membership in the Navajo Tribe as the following:

1. All persons of Navajo blood whose names appear on the official roll of the Navajo Tribe maintained by the Bureau of Indian Affairs.

2. Any person who is at least one-fourth degree Navajo blood, but who has not previously been enrolled as a member of the Navajo Tribe, is eligible for Tribal membership and enrollment.

3. Children born to any enrolled member of the Navajo Tribe shall automatically become members of the Navajo Tribe and shall be enrolled, provided they are at least one-fourth degree Navajo blood.

C. For purposes of this Agreement, all definitions contained in the ICWA are applicable and shall be referenced and utilized in the performance of each party's obligations.

D. Determination of membership in the Navajo Tribe shall be the sole responsibility of the NAVAJO TRIBE. Membership inquiries shall be referred by the STATE to the Navajo Contact Office designated in Section III.B.1. for processing, and a determination of membership shall be conclusive upon the parties. The NAVAJO TRIBE shall process all applications for enrollment in the Navajo Ttibe. The NAVAJO TRIBE shall make a determination of membership of a referred minor within ten (10) days from the time sufficient background information is provided to the NAVAJO TRIBE. If insufficient information to verify membership is provided, the NAVAJO TRIBE will request additional information from the STATE in writing within ten (10) days of receiving the inquiry concerning the minor's membership.

E. The STATE will follow the statutory confidentiality restrictions of the New Mexico Children's Code [§§32-1-1 through 32-1-45 NMSA 1978] and Adoption Act [§§40-7-1 to 40-7-11; and 40-7-13 to 40-7-17 NMSA 1978] in performance of its responsibilities under this Agreement. The NAVAJO TRIBE will follow the confidentiality restrictions of the Federal Privacy Act, 5 U.S.C. §552(a), and tribal policies in performance of its responsibilities under this Agreement. The STATE and NAVAJO TRIBE will share information in any child custody matter where there is a transfer of jurisdiction or cooperative placement efforts. Social services staff of the STATE will testify when necessary in Navajo tribal court upon issuance of a subpoena by the tribal court. Social services staff of the NAVAJO TRIBE will testify when necessary in state court upon issuance of a subpoena by the STATE.

III. NOTICE

A. Type of Proceedings.

1. The STATE shall notify the NAVAJO TRIBE of any instance where the STATE takes physicial custody of a Navajo child or of any child custody proceeding commenced by the STATE involving a Navajo child.

2. Notice shall be given of the following:

(a) involuntary proceedings: foster care placements; termination of parental rights; pre-adoptive and adoptive placements;

(b) voluntary proceedings: foster care, pre-adoptive placements, relinquishments and consents to termination of parental rights; and

(c) judicial hearings under the New Mexico Children's Code and Adoption Act.

B. Contact Persons.

1. When a child custody proceeding is commenced in a New Mexico state court concerning a Navajo child, the STATE shall provide notice as required by Section III of this Agreement, to:

THE NAVAJO NATION
Division of Social Welfare
P.O. Box JJ
Window Rock, Arizona 86515

602/871-4941 Ex. 1807 or Ext. 1936

2. When the STATE takes physical custody of a Navajo child, if the child is found in San Juan County, the STATE shall provide notice to the Shiprock Office of the Navajo Nation, Division of Social Welfare, Special Services Unit, P.O. Box 3289, Shiprock, New Mexico 87420, (505) 368-4319, 4320, 4433; if the child is found in McKinley County, Canoncito or Alamo, the STATF shall provide notice to the Crownpoint Office of the Navajo Nation, Division of Social Welfare, P.O. Box 936, Crownpoint, New Mexico, (505) 786-5225, 5300, 5500. If the Navajo child is found in any other county of New Mexico, the STATE shall provide notice as set forth in Section III.B.1. The NAVAJO TRIBE shall provide the STATE with emergency telephone numbers for after-hours and weekend contact. The contact person for the NAVAJO TRIBE shall be a Social Worker IV in the respective offices.

3. The contact persons for the STATE shall be the Office Managers of the San Juan and McKinley County Social Services Offices in New Mexico, or their designees. The addresses and telephone numbers of these offices are:

McKinley County
Social Services Division
2907 East Aztec
Drawer 1300
Gallup, New Mexico 87301
(505) 863-9556

San Juan County
Social Services Division
101 W. Animas
P.O. Drawer I
Farmington, New Mexico 87401
(505) 327-5316
(505) 326-3665 (after hours)

4. The contact person for the STATE for all other county offices shall be the Chief, Field Services Bureau, Social Service Division, P.O. Box 2348 - Room 519, PERA Building, Santa Fe, New Mexico 87504-2348, (505) 827-4266.

5. The emergency telephone number for the STATE for after-hours and weekend contact shall be 1-800-834-3456.

C. Time limits.

1. The STATE, within twenty-four (24) hours (excluding weekends and holidays) of taking physical custody of a child the STATE knows or has reason to know is or may be a Navajo child shall give notice by telephone to the NAVAJO TRIBE's contact person designated in Section III.B.2. above. Within five days of the initial oral notice, the STATE shall give written notice by registered mail, return receipt requested, to the NAVAJO TRIBE's contact person, designated in Section III.B.2. above.

2. The STATE, within twenty-four (24) hours of commencing a child custody proceeding in state court involving a child the STATE knows or has reason to know is or may be a Navajo child shall give notice by telephone to the NAVAJO TRIBE's contact person, designated in Section III.B.1. above. Within five days of the initial oral notice, the STATE shall give written notice by registered mail, return receipt requested, to the NAVAJO TRIBE's contact person, designated in Section III.B.1. above.

D. Contents of Notice.

The oral and written notice shall include the information requested in Appendix A to this Agreement (ICWA Notice), to the extent such information is available. In addition, the following information shall be provided:

1. a copy of the all pleadings in the child custody proceeding;

2. information about the child's circumstances, including the reasons for placement; and

3. identification of any special needs of the child.

IV. JURISDICTION

A. Exclusive jurisdiction in the Navajo Tribal Court.

1. The NAVAJO TRIBE shall have exclusive jurisdiction over any "child custody proceeding" as set forth in Section III.A.2., involving a Navajo child who resides or is domiciled within the Navajo Reservation. Where a Navajo child is a ward of the Navajo tribal court, the NAVAJO TRIBE shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Navajo child.

2. The "Navajo Reservation" is defined in the ICWA as all land within the limits of the Navajo Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Navajo communities within the borders of New Mexico; all Navajo allotments, the Indian titles to which have not been extinguished; including rights-of-way running through same; and any other lands, title to which is either held by the United States for the benefit of the Navajo Tribe or Navajo individuals, or held by the Navajo Tribe subject to a restriction by the United States against alienation.

B. State or tribal jurisdiction.

1. If a Navajo child is not domiciled or residing within the Navajo Reservation and is involved in a state court proceeding for foster care placement or termination of parental rights, a petition for transfer of the proceeding to the tribal court may be filed in state court and jurisdiction shall be determined in accordance with §101(b) of the ICWA. It shall be the policy of the STATE that a petition to transfer by the NAVAJO TRIBE will be favored whenever permitted by the ICWA. It shall be the policy of the NAVAJO TRIBE to request transfer only upon a determination that such transfer is in the best interests of the Navajo child and family. The STATE and the NAVAJO TRIBE agree to work cooperatively in all child custody proceedings to protect the best interests of the Navajo child and his or her natural family.

2. The NAVAJO TRIBE agrees to make every reasonable effort to file a motion to intervene in any child custody proceeding within ten (10) days and a petition to transfer jurisidiction to the Navajo tribal court within twenty (20) days after the NAVAJO TRIBE's contact person receives the written notice, as specified in Section III of this Agreement. If a transfer decision cannot be made by the NAVAJO TRIBE within twenty (20) days, the NAVAJO TRIBE will submit to the STATE in writing their plans for transfer, or reasons why a transfer decision cannot be made at that time and when the NAVAJO TRIBE expects that a decision can be made. A delay in petitioning for transfer or moving to intervene may include that insufficient information has been provided to the NAVAJO TRIBE to verify membership in the Navajo Tribe. If insufficient information to verify membership exists, the NAVAJO TRIBE will request in writing additional information from the STATE within ten (10) days of receiving written notice of the child custody proceeding in the NAVAJO TRIBE contact office designated in Section III.B.1. above.

3. During the twenty (20) day period following the NAVAJO TRIBE's receipt of written notice, representatives of the STATE and the NAVAJO TRIBE may arrange a staffing to discuss whether jurisdiction in the STATE or NAVAJO TRIBE would be in the best interests of the Navajo child. When selection has not been made between state and tribal court jurisdiction, the STATE shall proceed in accordance with the New Mexico Children's Code and Adoptions Act until such time as jurisdiction is transferred to the NAVAJO TRIBE; provided, however, that the STATE shall inform the NAVAJO TRIBE of all proceedings and staffings as provided in Section IV.B.4. below.

4. If the NAVAJO TRIBE declines jurisdiction in a particular case, the STATE shall continue to inform the NAVAJO TRIBE about the state court proceedings involving the Navajo child by providing the NAVAJO TRIBE with

copies of all motions, notices of hearing and orders filed in that case. A summary of casework activities shall be provided to the NAVAJO TRIBE every six months. In addition, the STATE shall give the NAVAJO TRIBE reasonable and adequate notice of all STATE staffings and the opportunity to participate fully in those staffings. The STATE and NAVAJO TRIBE shall cooperate in casework to the maximum extent possible, but the entity with jurisdiction over the Navajo child shall have the primary responsibility for casework.

5. Where a state court intends to dismiss a child custody proceeding for lack of jurisdiction, the STATE shall notify the NAVAJO TRIBE before the case is dismissed. In such cases, the STATE shall contact the NAVAJO TRIBE's contact person designated in Section III.B.1. above.

6. When the STATE has jurisdiction of a case involving a Navajo child residing within the Navajo Reservation, STATE social workers shall be permitted to enter the Navajo Reservation to provide appropriate social services to that child and his/her family. When the NAVAJO TRIBE has jurisdiction of a case involving a Navajo child residing off the Navajo Reservation, NAVAJO TRIBE social workers shall be permitted into New Mexico to provide appropriate social services to that child and his/her family. Arrangements may also be made in other individual cases to provide social services on or off the Navajo Reservation by the STATE and the NAVAJO TRIBE where such arrangements will be in the best interests of the child and/or family being served. STATE social workers may request the asssistance of Navajo police in appropriate circumstances. NAVAJO TRIBE social workers may request the assistance of State, County, or City police in appropriate circumstances. Whenever required, upon subpoena, STATE social workers will testify in Navajo tribal court and NAVAJO TRIBE's social workers will testify in State court.

V. PLACEMENT PREFERENCES

A. In all pre-adoptive, adoptive, or foster care placements under state law, the preferences and standards for placement provided in Section 105 of the ICWA shall apply in the absence of good cause to the contrary.

1. For adoptive placement, the placement preferences in order of priority are:

a. a member of the Navajo child's extended family;

b. other members of the Navajo Tribe; or

c. other Indian families.

2. For foster care or pre-adoptive placement, the placement preferences in order of priority are:

a. a member of the Navajo child's extended family;

b. a foster home licensed, approved or specified by the NAVAJO TRIBE;

c. an Indian foster home licensed or approved by the STATE; or

d. an institution for children approved by the NAVAJO TRIBE or operated by an Indian organization which has a program suitable to meet the Navajo child's needs.

3. Navajo custom and law regarding custody and placement of Navajo children shall also be utilized in the placement of Navajo children. Questions of Navajo law or custom shall be certified to the Judicial Branch of the Navajo Nation, Attention: Solicitor, P.O. Box 447, Window Rock, Arizona, 86515 for a written opinion. The Navajo child shall be placed within reasonable proximity to his or her home where appropriate.

B. Any Navajo child placed for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met; the child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

C. In any proceeding in which the STATE is unable to arrange compliance with the ICWA placement preferences pursuant to Section 105 of the ICWA, the STATE shall prepare a report evidencing its efforts to comply with the order of preference and shall send it to the NAVAJO TRIBE'S contact person designated in Section III.B.1. above within five (5) days (excluding weekends and holidays) of the placement.

D. In the placement of a Navajo child, the preference of the child's parent(s) shall be considered where such preference is appropriate. It shall be considered inappropriate for the parents of a Navajo child to request that their child not be placed in a Navajo or Indian home.

E. The request of a parent of a Navajo child to remain anonymous shall be honored by the STATE and NAVAJO TRIBE; however, it is understood that anonymity applies only to the parent's extended family. The request of a parent to remain anonymous shall not outweigh the right of a Navajo child to be raised within the Navajo culture or Native American culture.

VI. CHILD PROTECTIVE SERVICES

A. The STATE shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning Navajo children who are found off the Navajo Reservation. The NAVAJO TRIBE shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning Navajo children and non-Navajo Indian children who reside or are located within the Navajo Reservation. However, upon receiving a report of suspected child abuse or neglect, either the STATE or the NAVAJO TRIBE shall take immediate steps to investigate the report and insure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo Reservation or whether the child is Navajo or non-Navajo.

B. If the NAVAJO TRIBE receives a referral for child protective services concerning a non-Indian child who resides on the Navajo Reservation, the NAVAJO TRIBE shall do the preliminary investigation and take whatever action is necessary to insure the immediate safety of the child. The case will then be referred by telephone, with written confirmation following, to the appropriate STATE Social Services Division Office as provided in Section III.B.3. above, within twenty-four (24) hours, excluding weekends and holidays. The NAVAJO TRIBE shall be responsible for payment for custodial care for the child for the first twenty-four (24) hours. Where required, child protective service workers from the NAVAJO TRIBE will testify in STATE court to substantiate the initial removal of the child from his/her home. Primary responsibility for follow-up treatment and services to the non-Indian child and his/her family will lie with the appropriate STATE county office, unless representatives of the NAVAJO TRIBE and the STATE mutually agree upon other arrangements at a staffing held within twenty (20) days after the STATE's receipt of written confirmation.

C. If the NAVAJO TRIBE receives a referral on a non-Navajo Indian child who is found within the reservation but does not reside therein, the NAVAJO TRIBE shall do the preliminary investigation and take whatever action is necessary to insure the immediate safety of the child. The child will then be referred by telephone, with written confirmation following, to the appropriate STATE Social Services Division offices as provided in Section III.B.3. above or the appropriate tribe within twenty-four (24) hours, excluding weekends and holidays. The NAVAJO TRIBE will be responsible for the cost of custodial care of the child for the first twenty-four (24) hours of care. Where required, child protective service workers from the NAVAJO TRIBE will testify in STATE court to substantiate the initial removal of the child from his or her home.

D. In order to prevent imminent physical damage or harm to a Navajo child, the STATE shall take emergency custody of a Navajo child under New Mexico law and the ICWA if the child resides or is domiciled within the Navajo Reservation, but is temporarily located off the reservation. A referral will be made of the case within twenty-four (24) hours, excluding weekends and holidays, by the STATE to the appropriate NAVAJO TRIBE's contact person designated in section III.B.2. The STATE shall be responsible for the Navajo child, including payment to the shelter on behalf of the Navajo child, for the first twenty-four (24) hours. The NAVAJO TRIBE will make arrangements to assume custody of the Navajo child who is a resident or domiciliary of the Navajo Reservation within twenty-four (24) hours, excluding weekends and holidays, after referral, if the child is found within San Juan County or McKinley County or will assume responsibility for the cost of care after the first twenty-four (24) hours until arrangements can be made to assume custody of the Navajo child. The NAVAJO TRIBE will make reasonable efforts to assume custody of the Navajo child if found in an area other than San Juan County or McKinley County and will assume responsibility for cost of care after the first twenty-four (24) hours until arrangements can be made to assume custody of the Navajo child. If a Navajo child who resides and is domiciled off the Navajo Reservation is placed by the STATE in emergency care, the STATE shall be responsible for that Navajo child, including payment for shelter care on behalf of the child.

E. Regardless of the Navajo child's residency, if a Navajo child is placed by the STATE into an emergency shelter, and the Navajo child's family has requested the Navajo child to be released to them on a weekend or after-hours, if it would work a hardship on the Navajo child's family not to release the Navajo child at that time and if there is no evidence of significant abuse, upon notification to and approval by the STATE's on-call social worker, the Navajo child shall be released to his/her family. The STATE shall notify the NAVAJO TRIBE's contact person designated in Section III.B.2. above on the next working day. The STATE shall make payment on behalf of the Navajo child to the emergency shelter. If the STATE determines that it would not be in the best interest of the Navajo child to release him/her to family members upon their request, then the STATE shall retain physical custody of the Navajo child in the emergency shelter and the payment provisions of Section VI.D. above shall apply.

F. If a Navajo child is taken into the STATE's custody during normal working hours and the STATE has determined that the child should be released to his or her family, the STATE may release the Navajo child to his or her family in less than twenty-four (24) hours provided that the STATE has conferred with or made reasonable efforts to confer with the NAVAJO TRIBE's contact person designated in Section III.B.2. to determine whether there is an open case concerning that child. The STATE shall be responsible for the Navajo child, including payment to the shelter on behalf of the Navajo child for the first twenty-four (24) hours of care. If the NAVAJO TRIBE does not want the Navajo child released to his/her family the NAVAJO TRIBE shall proceed in accordance with the provisions Section VI.D.

VII. FOSTER CARE AND PRE-ADOPTIVE PLACEMENTS

A. The STATE shall recognize foster homes certified, approved or licensed by the NAVAJO TRIBE as meeting the foster home licensing requirements under state law and the NAVAJO TRIBE shall recognize STATE foster home licensing as meeting the requirements of the NAVAJO TRIBE. The STATE may place Navajo children in foster homes licensed by the NAVAJO TRIBE and the NAVAJO TRIBE may place Navajo children in foster homes licensed by the STATE if such placement is mutually agreed upon by the STATE and the NAVAJO TRIBE.

B. Upon taking custody of a Navajo child, the STATE shall assume responsibility for all costs of foster care (in both foster homes licensed by the NAVAJO TRIBE and the STATE), supervision and social services, until jurisdiction of the matter is transferred to the NAVAJO TRIBE, at which time the NAVAJO TRIBE shall assume responsibility for all such costs, subject however, to the emergency shelter care provisions of Section VI. above.

C. Upon taking custody of a Navajo child, the NAVAJO TRIBE shall assume responsibility for all costs of foster care (in both foster homes licensed by the NAVAJO TRIBE and the STATE), supervision, and social services, until such time as jurisdiction of the matter is transferred to the STATE, at which time the STATE shall assume responsibility for all such costs.

D. The STATE and the NAVAJO TRIBE shall coordinate efforts in locating the most suitable foster care and pre-adoptive placement for Navajo children in accordance with the placement preferences described in the ICWA and according to Navajo custom.

E. The NAVAJO TRIBE shall utilize its own foster care licensing, approval or certification standards in determining the suitability of homes to provide foster care on the Navajo Reservation and its own procedure for the approval of Indian foster homes. The NAVAJO TRIBE will provide the STATE with a copy of foster care licensing standards and procedures utilized by the NAVAJO TRIBE to license foster care homes on the Navajo Reservation, and will provide a copy of changes in foster care licensing standards and procedures within thirty (30) days after the effective date of such changes.

F. The STATE agrees that in the event a Navajo child is placed in the legal custody of the STATE and that Navajo child is placed in a licensed foster home of the NAVAJO TRIBE while in the legal custody of the STATE, the STATE shall pay the costs of foster or pre-adoptive care in the same manner and to the same extent as the STATE pays the costs of foster care to STATE licensed foster homes and shall proceed to manage the case in accordance with applicable state law and the ICWA. The NAVAJO TRIBE will assist the STATE in working with the Navajo foster parents and in management of the case when requested.

G. The NAVAJO TRIBE agrees that if it is necessary for a Navajo child in the legal custody of the STATE to be removed from a foster home licensed by the NAVAJO TRIBE or located on the Navajo Reservation either due to an order of a state or tribal court or due to a determination that removal is in the best interests of the Navajo child and the removal is recommended by a staffing between the STATE and NAVAJO TRIBE, the NAVAJO TRIBE will assist in removing the Navajo child from the Navajo Reservation and transferring physical custody of the child to the STATE.

H. The STATE agrees that if it is necessary for a Navajo child in the legal custody of the NAVAJO TRIBE to be removed from a foster home licensed by the STATE either due to an order of a state or tribal court or due to a determination that removal is in the best interests of the Navajo child and the removal is recommended by a staffing between the STATE and NAVAJO TRIBE, the STATE will assist in removing the Navajo child from the foster home and transferring physical custody of the child to the NAVAJO TRIBE.

I. The supervision of the placement of a Navajo child by the STATE in a foster home licensed by the NAVAJO TRIBE shall be a cooperative effort between the STATE and the NAVAJO TRIBE. Any change in such placement shall be made pursuant to a staffing between the STATE and the NAVAJO TRIBE.

J. The supervision of the placement of a Navajo child by the NAVAJO TRIBE in a foster home licensed by the STATE shall be a cooperative effort between the STATE and the NAVAJO TRIBE. Any change in such placement shall be made pursuant to a staffing between the STATE and the NAVAJO-TRIBE.

K. The NAVAJO TRIBE shall notify the STATE within twenty-four (24) hours from the time the NAVAJO TRIBE becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the STATE in a foster home licensed by the NAVAJO TRIBE. The NAVAJO TRIBE shall notify the Office Managers of the respective County Social Services offices in New Mexico or their designees, as provided in Section III.B.3. above or contact the STATE by use of the emergency telephone number provided in Section III.B.5. if the emergency situation occurs after-hours or on a weekend. Provided, however, that the NAVAJO TRIBE shall take whatever steps are necessary to insure the well-being of the child until the STATE can assume its responsibility.

L. The STATE shall notify the NAVAJO TRIBE within twenty-four (24) hours (excluding weekends and holidays) from the time the STATE becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the STATE or the NAVAJO TRIBE in a foster home licensed by the STATE. The STATE shall place the Navajo child in emergency foster care. The STATE shall notify the NAVAJO TRIBE's agency offices as provided in Section III.B.2. above. Provided, however, that the STATE shall take whatever steps are necessary to insure the well-being of the child until the NAVAJO TRIBE can assume its responsibility. The NAVAJO TRIBE shall provide the STATE with an emergency telephone number for after-hours and weekend contact.

VIII. ADOPTIVE PLACEMENTS

A. The parties to this Agreement shall coordinate efforts in locating suitable adoptive families for Navajo children.

B. The NAVAJO TRIBE shall with the authorization of the applicants provide the STATE with the names and home studies of prospective adoptive homes on the Navajo Reservation, in order to assist the STATE in complying with the placement preferences established in Section 105 of the ICWA and those of Navajo tribal custom. The STATE may conduct home studies of prospective adoptive homes located on the Navajo Reservation.

C. A request for anonymity from extended family members by parents who are placing their children for adoption shall be honored by both the STATE and NAVAJO TRIBE, but such request shall not override the basic right of a Navajo child to be raised within Navajo culture or Native American culture.

D. This section applies to both voluntary and involuntary placements.

E. All petitions for independent adoptions will be reviewed by the STATE to determine to the best of the STATE's ability given the information presented whether a Navajo child is involved. If such a child is involved, the STATE shall oppose waiver of the placement requirements unless there has been compliance with the ICWA placement preferences.

IX. CHANGES AND CANCELLATION OF AGREEMENT

A. Any provision of this agreement may be altered, varied, modified, or waived only if such alteration, modification or waiver is: 1) reduced to writing; 2) signed by authorized representatives of both parties; and 3) attached to the original of this Agreement.

B. This Agreement may be cancelled by either party at any time after one hundred eighty (180) days written notice of the intent to cancel has been given to the other party. Such cancellation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

X. EFFECT OF PRIOR AGREEMENTS

This Agreement supercedes all prior written and oral agreements, covenants and understandings between the STATE and/or its county offices and the NAVAJO TRIBE concerning the subject matter described herein.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT this 17th day of September, 1985.

Peterson Zah, Chairman
Navajo Tribe

Toney Anaya, Governor
State of New Mexico

Wilfred D. Yazzie
Wilfred D. Yazzie, Executive Director
Division of Social Welfare, Navajo Tribe

Juan R. Vigil
Juan R. Vigil, Secretary
New Mexico Human Services
Department

In accordance with the applicable laws, this Agreement has been reviewed by the undersigned who have determined that this Agreement is in appropriate form and within the powers and priority granted to each respective public body.

Date: Sept. 17, 1985
Claudeen Bates Arthur
Claudeen Bates Arthur
Attorney General for the Navajo Nation
Navajo Nation
P.O. Drawer 2010
Window Rock, Arizona 86515

Date: September 17, 1985
Ellen Souberman
Ellen Souberman
Brenda J. Bellonger
Brenda J. Bellonger
Assistant General Counsels
Office of General Counsel
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87503

APPROVED, DEPARTMENT OF
FINANCE AND ADMINISTRATION
~~State Contracts Officer~~

Date: 10 - 11 - 85

Appendix A

ICWA NOTICE

1. Information on the child is as follows:

   a. Name:________________________________

   b. Present residence:_______________________

   c. Place of birth:__________________________

   d. Date of birth:___________________________

   e. When child was taken into custody:_________

   f. Where child was taken into custody:________

   g. Tribal affiliation:_______________________

   h. Tribal census or enrollment number:________

2. Information on the parents is as follows:

A. a. Mother: NAME:______________________Maiden Name:____________

   b. Permanent Address:____

   c. Current Address:____

   d. Place of Birth:____

   e. Date of Birth:____

   f. Tribal affiliation:____

   g. Tribal enrollment or census number:____________________________

B. a. Father: NAME:______________________

   b. Permanent Address:____

   c. Current Residence:____

   d. Place of Birth:____

   e. Date of Birth:____

   f. Tribal Affiliation:____

   g. Tribal enrollment or census number:____________________________

C. If these are not the natural parents, please supply the same information on the natural parents:______________________________

____

____

D. Please supply the names of relatives, other family names, and other information about the extended family that will aid in identification:

____

____

____

3. The petitioner in this proceeding is:

   a. Name:__________________________
   b. Address:__________________________ Phone:______________
   c. Title:__________________________

4. The social worker for the state in this proceeding, if not the petitioner is:

   a. Name:__________________________
   b. Address:__________________________
   c. Phone:__________________________

5. The attorney for the petitioner is:

   a. Name:__________________________
   b. Address:__________________________
   c. Phone:__________________________

6. A petition concerning the named children has been filed in the Children's Court for ______________ County, State of __________________, Cause No. _________________. A hearing is scheduled in this matter on ____________, 198__, at _______ (am)(pm), before the Honorable _______________________. The address of the court is _____________________, ________, _________. The phone number of the court is ____________________.

THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

DIVISION OF SOCIAL WELFARE
Post Office Drawer JJ
Window Rock, Arizona 86515

December 4, 1987

The Honorable Daniel K. Inouye, Senator
SH-722 Hart Senate Office Building
Washington, D.C. 20510-1102

Dear Senator:

On November 10, 1987, while I was testifying at the Senate Select Committee Oversight Hearing on the Indian Child Welfare Act, Senator Dennis De Concini asked me specific questions concerning the incidence of private adoptions among Navajos. This I believe was in response to our request that the Act be clarified to specifically apply to private adoptions.

Unfortunately, when the Tribe does not receive notice of an adoption as mandated by the Act, which is all to often the case with private adoptions, we have no way to assert our rights guaranteed by the Act nor are we capable of quantifying the scope of problem.

The following numbers are based only on these case and instances where for various reasons the Tribe has been informed that a private adoption has occurred. This has generally occurred after the adoption has been finalized.

Prior to 1980, when the Navajo Nation formally implemented its ICWA program, we know of 19 adoptions. These are based on contact

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from individuals who claim to have been adopted and are seeking enrollment as a member of the Navajo Tribe, or some other assistance from the Tribe.

Since 1980 there are another 31 instances of private adoptions that have occurred and the Tribe did not receive the requisite notice as required by the ICWA. Our ICWA Program staff has become aware of these 31 instances through the following means:

a. Relatives who were aware of pregnancies within their extended families and became concerned when the child to be born was never seen by the extended family;

b. adoptive parents wishing to enroll the child for benefits from the Navajo Nation;

c. adoptive parents who relinquish parental rights or seek assistance from the Tribe when Navajo adoptees begin experiencing behavior problems;

d. the thorough screening by the State of Arizona's Interstate Compact Office in Phoenix, Arizona.

e. natural parents who regret relinquishing rights for adoption after the fact of the adoption.

f. concerned citizens who report Navajo children appearing to be out place or maltreated.

There are undoubtedly numerous other private adoptions which have occurred since the passage of the ICWA, to which the Navajo Nation has no knowledge of or information on. It is precisely this fact which supports our request that your Committee take action to make it patently clear the notice provisions of the ICWA are fully applicable to private adoptions. The failure of individuals and courts providing notices to Indian tribes in this situation, limits a Tribe's ability to assert its rights created by the ICWA.

I trust that this information points out the need for clarifying the application of the ICWA with regard to private adoptions, and is a partial answer to Senator De Concini's questions which arose during the hearing on November 10, 1987. Finally attached also is a copy of my verbal testimony as requested during the hearing.

Sincerely,

Anslem Roanhorse
Executive Director

AMERICAN INDIAN
3407 W 6 St., Suite 510, L.A., CA 90020 (213) 738-4204 (4202)
MENTAL HEALTH TASK FORCE

November 10, 1987

Senator Daniel Inouye
Senate Select Committee Indian Affairs
Senate House 838
Washington, D.C. 20510

Dear Senator Inouye:

The American Indian Mental Health Task Force is a southern California grass roots organization concerned about the mental health and welfare of the Indian community, particularly Indian children and families. The tAsk force is comprised of members from the following Indian community organizations:

Southern California Indian Centers
L.A.County Dept. Mental Health, Amer.Indian Program Development
L.A.County Dept. Child.Services (DCS),Amer.Ind. Child.Services Workers
Escondido Indian Child Welfare Consortium
L.A. Indian Free Clinic
Southern California American Indian Psychologists
and other community members

Following is our testimony regarding the Indian Child Welfare Act of 1978:

TESTIMONY RE ICWA

Today 63% of American Indians live in cities, and Los Angeles County is home to the largest urban Indian community, the second largest Indian community in the nation. Members from over 200 different tribes now live in this area. Three fifths of all urban Indians live below the poverty level, and in Metropolitan Los Angeles the unemployment rate for American Indians is 45%. Indians have the highest high-school drop out rate (23%), and if you include the number of students who never enter high school, this figure increases to an estimated 65%. Substance abuse is highest for

Indians vs. other ethnic minorities. Indian children suffer from mental illness at a rate of 20% to 25%.

These factors combined with other psychosocial stressors leave urban Indians at high risk for mental illness and impaired ability to care for families and children. It is estimated that 1 out of every 46 Indian children in Los Angeles is placed within the custody of the Juvenile Dependency Court. This figure does not include Indian children who are put up for adoption or placed out of the home in other institutions.

A 1985 study estimated an 85% ICWA non-compliance rate within the state of California. It has been our experience that compliance is elevated with the careful monitoring of governmental services by Indian run, ICWA programs.

In Los Angeles there currently is identified 206 Indian children within the DCS system, 99 of whom are placed outside of their family homes. Since identification of Indian children is a severe problem and past history indicates that the error rate might be as high as 100%, it appears that 200 Indian children in placement may be a more accurate figure.

Providing the appropriate , federally-mandated services is violated is many ways:

(1) Misidentification of Indian children is a severe problem because many have Spanish surnames, phenotypically are Anglo, or do not have a descriptive surname. Many times children are identified as Indian after they have been in the system for years. Late identification can result in dismissal of the case for improper procedures.

(2) Panel attorneys and the County Counsel have little knowledge about ICWA, and they perceive this legislation to be a tool of manipulation for the parents. Most of the attorneys are reluctant to do the extra work involved. In Los Angeles County, there is only one attorney who willingly works on ICWA cases.

(3) Private attorneys are frequently ignorant of ICWA law or chose not to follow it by instructing clients to not let the state social worker know of the Indian heritage of the child up for adoption.

(4) Childrens Services Workers (CSWs) are sometimes prejudiced and intentionally violate ICWA. At a child abuse workshop, 3 CSWs openly admitted that they would intentionally violate ICWA because they believed that it would be detrimental to the welfare of the child to give a tribe the opportunity to take jurisdiction and thus jeopardize the child's chance for a "good, mainstream education." Although notified in writing, their supervisor never responded.

(5) ICWA training results in improved communication between government workers and the local Indian community, more appropriate utilization of community resources, and increased ICWA compliance.

(6) Inadequate funding for legal services affects all aspects ICWA cases and prolongs cases as well as resulting in the permanent loss of Indian children to their families and their tribes.

(7) In Los Angeles there are no mental health services available which have been designed to meet the unique cultural needs of Indian people. Even when Indian people do utilize the County services,

they generally do not return because the services are insensitive to their needs.

For example: An Indian woman spanked her children abusively because they had been playing with matches and accidentally set the couch on fire. The mother, after putting out the fire, was extremely aroused and for the only time in her life did not have the impulse control needed as that time. Torn by guilt, she telephoned the Child Abuse hot line for information on counseling services. All 3 of her children were put into a foster home. She was told she had to go for therapy in order to get her children back. She went to the County mental health agency near her. The intake clinician was totally insensitive to the cultural issues involved, never sought consultation even though there was an Indian clinician in her agency who had provided cultural awareness training one month prior and asked to be consulted on all Indian cases. When the mother did not return, the worker sent her a terse, formal letter. The case went into permanency planning, because the mother had not received the Court mandated therapy. Fortunately, the CSW had just learned about the BIA-ICWA program. The family is reunited, and is no longer under the jurisdiction of the Dependency Court.

It is probable, as it is in many Indian cases, that if there had not been the ICWA program at that time, that those children would have been permanently removed from their mother.

Today, the Bureau of Indian Affairs chooses to determine that mental health psychological services are not fundable by their programs, even though such services are mandated in most cases by the courts.

And rightly so. These services are what enables parents to raise their level of functioning so that they can adequately care for their children. Not only should all ICWA programs contain funds for psychotherapy services, including psychological testing, but this should be spelled out as part of the definition of remedial, preventative and reunification services.

Although there is no hard data, American Indian clinicians, social workers and psychologists, agree that the most frequent psychological diagnosis is major depression that has evolved from the long history of removal of Indian children from their homes. This removal has disrupted the bonding process prerequisite for a healthy developmental process. Depression is frequently masked by substance abuse; it is frequently so debilitating that parents are unable to get out of bed to care for their children or necessary business. It is estimated that in L.A. about 80% of Indian parents whose children are removed from the home wind up homeless. This makes reunification even more difficult.

Although the population of American Indians in Los Angeles is only .6% (six tenths of one percent), 5.5% of the Skid Row homeless are American Indians. Furthermore, over 1/3 of Indians served by Native American Housing, an emergency housing program, are children. Yet only about 3% of Indians achieve stable housing. These families are at high risk for having their children removed. Urban ICWA programs must include case management and mental health services to these high risk people as well.

The unavailability of Indian foster and adoptive homes, particularly in urban areas contributes to the erosion of Indian culture throughout the United States.

In the Los Angeles dependency system, there are children from tribes from coast to coast. Some of the children are full bloods; others are not. Some children are over 25% Indian but not eligible for enrollment because a tribe is matrilineal vs. patrilineal, or the child is not of sufficient blood quantum in any particular tribe. These Indian children must be protected by the Indian Child Welfare Act. Even if no tribe wants to take jurisdiction, the children can be placed in Indian foster homes and qualify for ICWA remedial, preventative and reunification services. Additionally, Canadian Indians must be recognized as qualifying for ICWA programs, as a result of the Jay Treaty.

The State of California has more Indians than any other state, yet only 11 counties are covered by ICWA programs. Few directors of county Departments of Mental Health have heven heard of the Indian Child Welfare Act. ICWA must spell out that urban Indian communities are entitled to funding for ICWA programs. To ignore 63% of the Indian population is to contribute to the genocide of Indian people. Additionally, no group, Mormon or otherwise, should be exempt from ICWA restrictions.

The Indian Child Welfare Act is one of the most significant pieces of pro-Indian legislation. However, it accomplishes nothing if it is not backed by funding to accomplish its goals. Certainly, by providing extremely inadequate funding, as is now the case, the government perpetuates inter-tribal conflict and conflict between reservation and urban communities. If that is the goal of Congress, they are doing a good job.

There are many ways in which adequate funding can be achieved. There can be included in the ICWA the mandate for states to provide funds for adequate ICWA programs on the county levels. The California State Conditional Release Program is an example of how that can be done. Congress can increase the BIA budget for adequate ICWA funding. We recommend that the Title II of the Indian Child Welfare Act be included as an entitlement program under the Social Security Act.

In conclusion, we recommend that:

(1) ICWA funding be expanded to include urban programs, and that each urban, rural and reservation community assess their ICWA needs and receive funding based on need.

(2) ICWA programs include monies for: (a) adequate legal representation; (b) adequate mental health, case management and psychological services, as part of preventative, remedial and reunification services; (c) services for homeless Indian families as part of preventative services; (d) the development of adequate foster and adoption resources; and (e) training programs and dissemination of materials.

(3) Any Indian child, Canadian or U.S., who is 25% Indian or more be eligible for ICWA programs regardless of enrollment status.

(4) That no special interest group be exampt from ICWA restrictions.

(5) That the Title II of the ICWA be included as an entitlement program under the Social Security Act.

Thank you for your kind attention.

Respectfully submitted,

John Castillo

John Castillo, M.S.W.
Chairman, American Indian Mental Health Task Force, Southern Ca.
Chairman, Indian Child Welfare Task Force, L.A.
American Indian Employment & Training, Southern Ca. Indian Center

Three Feathers Associates
P.O. Box 5508
Norman, Oklahoma 73070
(405) 360-2919

TESTIMONY TO THE
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
SENATOR DANIEL K. INOUYE, CHAIRMAN

OVERSIGHT HEARINGS
ON THE
INDIAN CHILD WELFARE ACT, P.L. 95-608

BY

ANTONIA DOBREC, PRESIDENT
& DIRECTOR OF PROJECTS
THREE FEATHERS ASSOCIATES
NORMAN, OKLAHOMA

JANIE M. BRADEN,
FAMILY COURT SERVICES COUNSELOR

THURMAN L. WELBOURNE, MSW
FAMILY COURT SERVICES COUNSELOR

November 10, 1987

Mr. Chairman and Members of the Committee:

Three Feathers Associates is honored to present it's assessment of the Indian Child Welfare Act and to provide the Senate Select Committee on Indian Affairs with our recommendations for addressing issues that affect the full implementation of the Act and the provision of child welfare services to Indian children and their families.

My name is Thurman Welbourne. I am employed by Three Feathers Associates as a Family Court Services Counselor for the Court of Indian Offenses. The Court provides judicial services for 13 tribes and serves as the Appellant Court for 6 tribes within the Anadarko Service Area for the Bureau of Indian Affairs.

With me today, is Janie Braden. Ms. Braden also serves as a Family Court Services Counselor. Ms. Dobrec, President of Three Feathers Associates and Director of Projects is unable to be with us today because of prior business commitments.

Three Feathers Associates has been actively involved in providing training and technical assistance for Indian tribes and organizations since 1981. Currently, TFA

<> serves as the only Indian Head Start Resource Center and Resource Access Project in the Nation;
<> operates the American Indian Child Welfare Training and Technical Assistance Program, which provides training and technical assistance in child welfare services with a concentration in child protective service, foster care services, youth services and child sexual abuse;
<> has been working with CSR, Incorporated, Washington D.C., as the sub-contractor in the National Study of the Implementation of the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act of 1980; and,
<> has developed and implemented the Family Court Services Program for the Court of Indian Offenses, Anadarko, Oklahoma.

Based upon our knowledge and experience in working with over 300 tribes and Indian organizations, and our direct experience in providing child welfare services for Indian children, families and juveniles, we present our issues and recommendations. The large-scale intrusion of outside systems into Indian parent-child relationships and the separation of Indian children from their families and communities by public and private child welfare workers has been documented (American Association on Indian Affairs, 1976, University of Denver, Denver, Colorado, 1976).

As a result of the findings of these two groups and efforts of concerned Indians, non-Indians and other organizations, the 1978 Indian Child Welfare Act has become the most significant piece of legislation affecting American Indian families passed by the United States Congress. Within 350 days, the ICWA will be 10 years old (November 8, 1988). We do believe, it now can be said, that the Act has been tested. States and tribes have experienced failures and successes in implementing and following the provisions of the Law. We suggest to the Select Committee on Indian Affairs that consideration be given by the U.S. Congress to amend the Act.

Through substantive amendments, it is hoped that clarification would be provided to states and tribes' as to their role and responsibility, relating to child custody proceedings (Title I of the Act). Title I, currently, addresses the responsibilities of the states and is generally silent on the responsibilities of the tribes: their roles are implied. Further, Title II, Indian Child and Family Programs and Title III, Recordkeeping, Information Availability, and Timetables would be amended to address the issues we will identify which have inhibited states and tribes in working toward the full implementation of the Act.

The following are issues and recommendations we are submitting for consideration by the Senate Select Committee on Indian Affairs:

1. **PROBLEM STATEMENT:**

Tribes and their judicial systems are dealing with juvenile delinquency on the local level. The ICWA is silent on the issue of juvenile delinquency which precipitates problems for tribes when juvenile delinquent acts occur with their jurisdictional boundaries. Additionally, state courts and social service agencies are hesitant and do not, generally, assume responsibility for the delinquent acts that occur outside of their jurisdiction. This seems to be reasonable.

Complicating this situation is the Bureau of Indian Affairs interpretation that juvenile delinquency does not fall under the purview of the Act. As a result, tribal child welfare programs (ICWP) are having to address these problems with no provisions provided for within the Act. Further, the general lack of custody provisions, facilities and dollars to support programs for juvenile offenders inhibit the provision of preventative and treatment services for American Indian youth.

Currently, individual ICWPs, CIOs and tribal courts have attempted to develop and address the delinquency problem on a case by case basis. To date, there has been no coordinated effort among these various systems, that we are aware of, in dealing with this issue. We do believe and have experienced, that an uncoordinated system leads to inconsistencies in the delivery of services to the American Indian youth and their families.

It appears to us that the juvenile delinquency problem is as prevalent within the Indian communities, as is the problem of child abuse and neglect. Unfortunately, we are having to deal with this issue on a second priority basis due to limited funding and the lack of available resources.

RECOMMENDATION: We recommend that provisions addressing the problem of juvenile delinquency in Indian Country be included in the ICWA. Furthermore, these provisions should clearly define the role and responsibilities of the tribal court related personnel in relationship to the the tribal/CFR court systems. We contend that this would provide a standardized service approach in meeting the needs of tribal youth and their communities, and facilitate the establishment of protocols for relationships between the various actors in addressing the issue of juvenile delinquency.

2. PROBLEM STATEMENT

The ICWA excludes the involvement of ICWPs in divorce and civil child custody proceedings which come before the tribal and CIO courts. Nevertheless, the reality is that tribal child welfare workers are often ordered by the courts to provide social assessments and recommendations for the best placement of the children involved in such proceedings. We believe that divorce and civil child custody proceedings should be excluded from the Act, but, also, believe that provisions should allow child welfare workers a mechanism for providing the court systems with recommendations that best serves the interest of the child. In most divorce and civil child custody proceedings that we are aware of, indicate that the parties involved, typically, do not have legal representation and, therefore, have no formal method to mediate the issue of child custody. In the absence of legal representation, the courts have no alternative but to order the child welfare workers to conduct an assessment and provide recommendations to help the courts to determine the best placement of the child.

Because of the insufficient number of professionals and support personnel in the tribal and CIO courts, Indian communities often are confused by Indian child welfare workers being involved in child custody proceedings, and assume that ICW staff are responsible for all child custody issues within the court systems.

RECOMMENDATION: Provisions in the Act are critically needed in this area. This would permit tribal and CIO courts to establish mediation and diversion programs as part of the court systems; assist the courts in making the most appropriate placements for Indian children; assist the court in maintaining Indian families; and, reduce the burden of already over worked courts.

For example, in the Western Oklahoma area Three Feathers Associates has established the American Indian Family Court Services Program which provides mediation services in divorce and civil child custody cases,in addition to it's contracted services. This demonstration project was funded by the BIA to serve as a court liaison program for individual tribal child welfare programs. This program was initiated in January, 1987 and has already shown potential in the area of mediation and diversion within the tribal and CFR Court systems.

3. PROBLEM STATEMENT

The Act clearly states that Indian tribes and each respective state shall give and provide, "Full Faith and Credit" to public acts, records and judicial proceedings of respective judicial systems. However, we have experienced difficulty with court system not honoring the court orders issued by another court system. For example, a New Mexico tribal court system would not honor or accept a court order issued by an Oklahoma tribal court. Consequently, the Oklahoma tribal court order was ignored by the New Mexico tribal court system. This situation has occurred involving tribal court systems vis-a-vis State District Courts. Thus, the "Full Faith and Credit" provisions are and have not been adhered to consistently within the past 9 years.

RECOMMENDATION: We recommend that a mechanism be developed within the ICWA to resolve the aforementioned legal disputes. The various court systems that are presently involved include: tribal, CFR, and state district courts. This tends to create a multitude of legal issues. We suggest that the ICWA be amended to address this confounding problem and that a legal process be developed to resolve these disputes. This issue is even more critical when state court systems, and tribal/CIO court systems are involved. It has been our experience, that the legal issues take priority over the actual children involved in a particular case, placing the Indian children in "**legal limbo**". From the social worker perspective, we feel that the legal disputes should have a forum established that would address the jurisdiction of a case in a more timely manner. This in itself would free the ICW workers to develop permanent placement plans for the children in their case loads.

4. PROBLEM STATEMENT

Through a Memorandum of Agreement, the Bureau of Indian Affairs and Indian Health Service have mandated the establishment of child protection teams within their respective service areas. This administrative mandate is a formal attempt at inter-agency coordination, between BIA and IHS to maximize the existing services available to child abuse and neglect problem. At present, the tribal child welfare programs and tribal and CFR courts participate on a voluntary basis. Various tribes throughout the Nation are finding this administrative mandate an infringement of their sovereign rights. Many believe that the action taken by the BIA and IHS is inappropriate and that the teams do not have legal authority to be involved in the review of cases that come under tribal child protective service systems. Many tribes are considering not participating in the development or operation of child protection teams.

We believe that the child protection team concept is a viable and workable approach for providing coordinated child protective services for Indian children and may serve to enhance and strengthen the Indian child welfare system throughout the Nation. As part of this system, a child tracking system would be developed, there would be a greater likelihood of on-going cases monitoring and, finally, a reporting system could be developed so that the incidence of child abuse and neglect and disposition would more accurately be maintained by the BIA.

RECOMMENDATION: We recommend that the concept of child protection teams be incorporated in Title II of the Act so that teams would be legally sanctioned. We further recommend that tribes assume the leadership role in developing and managing the local child protection teams. Basically, the cases that would be assessed and reviewed would be tribal children. Additionally, tribal law enforcement and tribal social services should be responsible for receiving and investigating reports of child abuse and neglect. A provision should be provided for in the event that a tribe does not operate a child welfare program or has not established a law enforcement program that the local BIA Agency assume the child protective team and investigation responsibilities.
We, also, recommend that BIA and IHS employee be required to be members of the teams managed by the tribes.

In terms of the area child protection teams, we feel that the BIA should be responsible for establishing and implementing the area tracking and monitoring systems in cooperation with the Tribes and/or Indian organizations within their respective service areas. This would be an appropriate role for the BIA and IHS. For example, if all service providing agencies within the tribal systems were legally required to participate in the child protection teams, this would make for a more complete and consistent delivery system. Also, this would cause the various programs to be accountable for the services they provide and could assure that follow-up action and case management would be monitored.

5. PROBLEM STATEMENT

Jurisdictional issues concerning child custody proceedings involving a non-Indian parent has become an increasing problem in Indian courts. The termination of parental rights presents a dilemma for the ICW workers and their respective tribal and/or CFR courts.

In Section 1912, subsection (f) Parental rights termination, orders that evidence and a determination of damage to child be provided in this action. Nevertheless, tribal and CFR courts tend to delay this particular court action .s long as possible without placing children in imminent harm.

We want it clearly understood that we do not promote or advocate involuntary termination, but that in some instances this action is necessary for the well being and protection of a child. There is an assumed responsibility that we must recognize. All child custody proceedings will not result in reunification of the family. Therefore, we must consider involuntary termination as an alternative. Furthermore, we believe that many ICWPs and tribal and CFR court systems have avoided this type of action, and tend to place a child in "long term foster care" or maintain a child in the system under a temporary custody order.

The major concern arises when one of the parents is a non-Indian and this situation causes the tribal and CFR court to move with more caution and in some instances no action is ever taken. The Indian child or children are confined to a tribal or foster care placement, usually and unfortunately, until they reach the age of majority. As a result, we have neglected our responsibility and duty to provide the child with a permanent and stable home environment.

RECOMMENDATION: We recommend that the ICWA be amended to extend tribal and CFR Court jurisdiction over the non-Indian parent of an Indian child. We have experienced situations where the tribal and CFR court systems have on going jurisdiction over the Indian child but we cannot assume jurisdiction in regards to the non-Indian parent. This has caused the tribal and CFR courts to become hesitant in pursuing involuntary termination of parental rights. Once again, it appears that a greater weight is given to the parent's rights versus the rights of the child, and in actuality, the rights of the tribe.

6. PROBLEM STATEMENT

Today, tribes are less likely to accept jurisdiction of children who may require intensive care to meet special needs, or children who have not had "significant contact" (ICWA,1987) with extended family members or the tribal community throughout their young lives. Tribes are becoming rational decision makers in accepting and rejecting jurisdiction of Indian children and are making decisions based upon the "best interest" of the child and the tribe. This rationality, although logical, is problematic. Tribes lack the financial resources, facilities and trained staff to support children with special needs, e.g., severe emotional problems, children with severe handicapping conditions and health problems.

For example, the Blackfeet in Montana is, currently, investigating 638 contracting for child welfare services. The BIA, Blackfeet Agency, is supporting a child in an institution at approximately $30,000 per year which is approximately one-third of the Snyder Act funds for that agency. If the tribe assumes the responsibility of child welfare services under 638, they also assume this liability for the rest of the child's life. This limits the tribe's ability to provide on-going substitute care services for other needy tribal children and the reunification of children and their families.

Additionally, with tribes using the "significant contact" clause of the Act more and more frequently, unanticipated consequence for the tribe and affected children may be forth coming. The tribe may lose vital human resources and the affected children may lose their birthrights and cultural heritage, because tribes have limited alternatives to maintain jurisdiction of children living outside of identified Indian land.

Further, sixty-three percent of the Native American population lives outside the jurisdictional boundaries of the recognized tribal governments (Plantz, 1986). Therefore, the likelihood of voluntary and involuntary child custody proceedings falling within the jurisdiction of the states' is potentially greater. States, typically, have sufficient resources to provide a continuum of services for children in need of care.

As a result of the tribes' more rational decision making, and the states' ability to provide a broader range of services, the public child welfare system will continue to maintain Indian children in substitute care, and place Indian children for adoption at approximately the same rate that exists today. The exact number of Indian children in public substitute care is not known, and the number of adoption decrees reported to the Secretary of the Interior by states is fragmented and inconsistent, (Sambrano, Plantz & Dobrec). The state data compiled by the Bureau of Indian Affairs in 1984 stimulates provocative questions.

Progress is being made in the delivery of child welfare services for Indian children by tribes and states. Nevertheless, the BIA data could indicate that reunification of Indian families is not taking place, that permanency planning is being implemented slowly, if at all, and that the adoption of Indian children is on the increase within the public welfare system. For example, the BIA data demonstrates that:

<> between the period of August 1982 to August 1983, the number of Indian children receiving public foster care and institutional services increased from 1,230 to 1,592, which represents 362 more children in state care;

<> between the period from December 17, 1981 through January 31, 1983, adoption decrees for Indian children grew from 62 to 193 for a 105 percent increase; and,

<> for the period from January 31, 1983 through October 3, 1983 increase 40%.

We do not want to invalidate the improved efforts of states in providing foster care services for Indian children, nevertheless, there is a problem. States with Indian children in care have not been able to demonstrate or maintain successful recruitment programs for Indian foster care homes. This has debilitated the states' ability to follow the order of preference as spelled out in the ICWA or attend to the requirements of the Adoption Assistance and Child Welfare Act of 1980 for the preferential placement with relatives, or the least restrictive environment consistent with the child's needs.

RECOMMENDATIONS: To assist the states in securing and maintaining appropriate foster care placements for Indian children, a stronger, clearer role for off-reservation Indian centers and organizations should be defined so that states must strongly consider using such organizations as recruitment, training and placement agencies. The roles of these agencies should also include the placement and assessment of children under the jurisdiction of tribes but living outside of the tribal services area. In collaboration with tribes, the staff of these agencies could serve as case "intervenors" when formally requested by tribes. Both, state purchase of service funds, and Title II funds, should be made available to support this effort.

Expected Benefits: States would have available foster care homes that would allow them to follow the requirements of both the ICWA and the AA/CWAA in placing Indian children in foster care. Tribes would be provided additional cost effective alternatives for intervening in cases under the jurisdiction of states, and for securing placements of children under their care outside the tribal service areas.

In circumstances where tribes reject transfers of jurisdiction from states because of the degree and extent of social, mental and/or health care needs of a child, the ICWA should stipulate that the affected states and tribes must enter into concurrent or partial jurisdiction arrangements so that both states and tribes can maintain their legal responsibilities and Indian children can receive the best available services.

EXPECTED BENEFITS: There would be a decrease in the number of rejected transfers of jurisdiction by tribes, more Indian children would maintain their link to their tribal heritage and states would be less prone to seek transfer of financial liabilities inherent with serving children with emotional and physical handicapping conditions.

7. PROBLEM STATEMENT

The provision of child welfare services to Indian children and their families is complicated by multiple, overlapping and often unclear assignments of authority and responsibility. The Indian Child Welfare Act requires the interaction of tribal, state and federal governments relative to Indian children. Because of the complexities, there are numerous provisions within the ICWA that which have proven to be difficult to implement. Further, the extent that the Act has been implemented can not be determined, primarily, because no mechanism or structure has been activated to monitor or evaluated compliance with the Law. For example,

1. Public child welfare agencies and state courts have found it difficult to understand and accept existing Court of Indian Offenses and tribal courts, as a result, the Indian courts are not extended appropriate protocols, and "Full Faith and Credit" is not extended by the state courts. Further complicating the situation is the fact that not all tribes have established judicial systems.

2. State courts do not consistently address the requirements of the Act to notify tribes when a child of Indian descent becomes known to the public agency or court system. States that do consistently try to meet the requirements of the Act complain that the response of the tribes are slow, if a response is provided at all.

3. Full faith and credit is not consistently provided between state courts and tribal courts, or tribal courts to tribal courts. As a result, Indian children are often held captives by the systems. Actions such as this limit the ability of service providers to work toward permanency.

4. There is no standardized method of tracking an Indian child that enters the substitute care systems of the states, tribes or BIA. As a result, it is highly improbable to determine an accurate accounting of the total number of Indian children in substitute care or to determine the level of services provided by each system in the area of preventative services, permanency planning and re-unification of Indian families.

As a result of the various difficulties which have surfaced within the past 9 years, Indian children carry the burden and are often lost in the systems, lose their link to their tribal heritage and experience multiple placements within the various systems. They are like the proverbial "bouncing ball".

RECOMMENDATIONS: The Secretary of the U.S. Department of Interior be required to submit, on an annual basis, a report that delineates the status of Indian children in: substitute care within the state public welfare system, tribal child welfare system and Bureau of Indian Affairs system; and, the status of Indian children in pre-adoptive placement and the number of adoption decrees granted by courts serving these three systems.

Additionally, this report should include the status of child custody proceeding of tribal and state systems, the extent that "Full Faith and Credit" is extended to the various judicial system affecting Indian children and their families, the efforts states are making in recruiting and maintain Indian foster care homes, a review of all agreements entered into by states and tribes, plus obstacles that hinder states and tribes in negotiating intergovernmental agreements.

Secondly, Congress should direct the Secretary of the Interior and the Secretary of the Department of Health and Human Services to jointly develop and implement a system for annual on-site compliance review of states and tribes providing services to Indian Children. Further, where it is found that non-compliance exists, teeth be provided in the Act to allow for the withholding of all federal assistance received by the non-complying state or tribe.

Thirdly, Congress should direct the Secretary of the Interior to establish a mechanism for resolving disputes between tribal courts that do not provide "Faith and Credit" to each other when Indian children are involved.

8. **PROBLEM STATEMENT**

The Bureau of Indian affairs has been unable to support innovative research and demonstration programs within Indian Country because of the restrictions within the Act itself. Because the Act does not provide for research and development, most of the demonstration programs and research activities funded have been supported by the U.S. Department of Health and Human Services.

A stronger commitment by the Federal government is needed in this area if in fact, locally designed service systems are to be designed, comprehensive planning is to be undertaken by tribes, improved collaborative relationships between tribes and states are to be secured and locally designed programs are to be developed and supported which would address the social problems affecting the disruption of Indian families.

RECOMMENDATIONS: The Act should be amended to include a Title that provides the Secretary of Interior, in collaborative efforts with the Secretary of Health and Human Services, the responsibility and sufficient funds to establish on-going: research and demonstration programs for Indian child welfare services; programs for the education and training of social workers and counselors; and a National Indian Child Welfare Center.

The National Indian Child Welfare Center would serve as a clearing house of information, provide for resource material development, provide on-going in-service training for child welfare workers, supervisors and administrators, and provide training and technical assistance for child welfare workers within the public welfare systems. The current National Child Welfare Centers supported by the Department of Health and Human Services would serve as a model.

EXPECTED BENEFITS: Efforts in this area would positively build the capacity of on-reservation and off-reservation programs in planning, developing, implementing and evaluating comprehensive child welfare programs. Further, collaborative efforts between states and tribes could possibly increase, and, therefore, Indian children would receive appropriate services.

Thank you, Mr. Chairman and Committee Members, for the opportunity to express our views and concerns as it relates to possible amendments to the Indian Child Welfare Act of 1978. We conclude our testimony with one last request. **It would please us very much, if Congress would resolve that the month of November, 1988 be Native American Child and Family month.** Thank you.

If the Committee has any further questions, please contact us. Again, thank you for your time and efforts on behalf of Indian children and families throughout the Nation.

INDIAN ASSOCIATION OF ALBERTA AND MIKMAQ GRAND COUNCIL OF NOVA SCOTIA

BRIEFING PAPER:

U.S. INDIAN CHILD WELFARE ACT AMENDMENTS

1. It is of utmost importance to include aboriginal Canadians in the scope of the Indian Child Welfare Act. Although there is no comparable national legislation in Canada, a number of provinces have enacted similar provisions, and the trend is towards greater devolution of child-welfare responsibilities to aboriginal organisations.

2. The international border physically divides more than a dozen major aboriginal nations, and it is a tragic fact that aboriginal Canadian children are separated from their communities by social welfare agencies in the United States each year. Although there are Blackfeet reserves on both sides of the border, for example, a Blackfeet child from the ~~Stoney~~ Blood Reserve in Alberta, taken into custody while visiting relatives on or near the Blackfoot Reservation in Montana, is not "Indian" under ICWA and therefore need not be returned to either reserve.

3. Because of the depressing economic conditions on most reserves in Canada, a great number of aboriginal Canadians seek temporary, largely seasonal work in the United States each year. Several thousand Mi'kmaq work each summer in the blueberry and potato fields of Maine, for instance, and there has been a substantial Mikmaq community in Boston, consisting of temporary as well as permanent U.S. residents, for more than two centuries. ~~Mikmaq~~ INDIAN families residing temporarily in the United States suffer from exactly the same stereotypes and biases on the part of social-welfare agencies as U.S. Indians have reported. They have fewer resources to protect themselves, moreover, because they are not only non-"Indians" under U.S. law, but also non-citizens.

B.C. & ALTA. INDIANS IN WASH. ST. ORCHARDS

4. While we welcome the initiative taken by the Association on American Indian Affairs in this regard, its proposal to add the words, "tribes, bands, nations or other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof," to the definition of "Indian tribe" is incomplete and not compatible with Canadian conditions or administration. In our view it would result in judicial and administrative confusion, inconsistent results, and too little protection.

5. It is essential that any references to Canada added to ICWA (a) be consistent, for the sake of precision and clarity, with Canadian terminology; (b) be realistic and appropriate in terms of the organisation and administration of aboriginal communities in Canada; and (c) place aboriginal Canadian and American Indian children on an equal footing as far as possible. Achieving this will require (in our view) a new explanatory section of the Act, rather than simply lumping Canadian children into the existing

provisions without adjustments. Before introducing our proposed text, some background on aboriginal Canadians will be useful.

6. Under section 35 of the Constitution Act, 1982 there are three "aboriginal peoples of Canada": Indians, Inuit, and Metis. Most aboriginal groups refer to themselves as "First Nations."

7. The Indian Act provides for the registration of Indians, and registered ("status") Indians may or may not also be listed as members of particular "bands." Bands exercise various degrees of internal self-government under the Indian Act and agreements with the Minister. In northern Quebec, an alternative form of Indian regional government has been established since 1975 as part of a comprehensive land-claims agreement. Except as provided by a treaty or agreement, provincial child-welfare laws apply on reserves.

8. Inuit are not organised into Indian Act bands, and there are no reserves. The Inuit of northern Quebec have established a regional administration as part of their land-claims agreement with Ottawa, but Inuit self-government elsewhere is conducted by village mayors and councils under both federal and territorial supervision. Inuit legal status is in a dynamic state pending the settlement of land claims to two-thirds of the Arctic, and one proposal under serious consideration is the organisation of a new, predominantly-Inuit province.

9. Metis, properly speaking, are Prairie groups OF MIXED FRENCH AND INDIAN ANCESTRY ~~whose treaty status was terminated by Parliament following Riel's rebellion a century ago~~. Many still live in distinct rural communities, particularly in Manitoba. In addition, there are thousands of "non-status Indians" throughout Canada whose ancestors were "enfranchised" involuntarily because of marriage to non-Indians men, or under a programme which resembled the United States' "forced fee" policy of the 1910s. Canada recognises national-level Metis and non-status political organisations only.

10. While "bands" are the basic unit of Indian Act administration they are an artificial construct based on residence on a reserve, rather than cultural unity. Some bands are multitribal, but in a majority of cases the ethnohistorical tribe or nation is divided into several bands. Although bands have called themselves "First Nations," they are not "nations" in the same sense as the ~~[illegible]~~ NAVAJO or Haida. In many instances, including Mikmaq and Blackfeet, the traditional national political organization persists, but is not recognised by Canada.

11. The situation is further complicated by "Provincial/~~Treaty~~ TERRITORIAL Organisations" (PTOs). Originally authorised in 1972 to pursue land claims, PTOs also receive federal funding for a variety of human-services programmes. Other regional aboriginal human-services organisations have also emerged recently, outside the band or PTO structure.

12. The superimposition of bands, PTOs, other government-funded aboriginal organisations, and traditional national councils makes the jurisdictional situation somewhat more complex and uncertain in Canada than in the United States, where authority is more or less clearly lodged in tribal councils recognised and listed by the Secretary of the Interior. Indeed, the Canadian situation is somewhat comparable to Alaska, where there is an unresolved distribution of responsibilities among municipal, tribal, regional aboriginal, state and federal agencies.

13. In Atlantic Canada, for instance, Mikmaq people are found in five provinces. In Nova Scotia alone there are more than thirty Mikmaq reserves, some presently uninhabited. All Nova Scotia Mi'kmaq originally were registered as a single band, but in 1960 the Minister divided them into twelve bands, and apportioned the reserves among them. A PTO for Nova Scotia Mi'kmaq was formed in 1972, but Mi'kmaq in New Brunswick and Quebec fall within other PTOs, and a second Nova Scotia PTO was formed in 1987. There is a Native Council of Nova Scotia for non-status Mi'kmaq, as well as several wholly independent regional Mi'kmaq service agencies such as the Mikmaq Arts and Cultural Society. The traditional national government, the Grand Council, continues to function, especially in relation to treaties and claims, and maintains a consular office in Boston.

14. The point of all this is to emphasize the necessity of taking Canadian organisational differences into account, insofar as they affect the locus of responsibility for child welfare. American caseworkers and judges need more precise guidance. Who should be notified, for example, when a Mikmaq child is taken into custody in Boston? The child's band--if it has one? A PTO? The Native Council? The Grand Council? Most have federally-recognised and funded responsibilities for community services; only the Grand Council has an office in the United States. A provision allowing aboriginal groups to designate agents for notice and intervention would be the most practical way to solve this problem.

15. The importance of a designated-agent provision is especially clear in trying to apply the placement-priority rules in section 105 of ICWA. A ~~Mikmaq~~ BLOOD INDIAN child may belong to a band, and may also be connected with one or more PTOs and other recognised regional ~~Mikmaq~~ BLACKFOOT organisations. Which one is the child's "tribe"? If the court cannot identify a suitable foster home within the child's own band (or reserve), can it place the child in any "Indian" home, rather than a ~~Mikmaq~~ BLOOD INDIAN home? That would be the result of treating "tribe" and "band" as equivalent.

16. Notwithstanding the relative complexity of the organisational system in Canada, we see no reason why the transfer provisions of section 101(a) should not apply, as long as there is a provision for designating agents as well. In a case where the child is not only Indian, but from another country, repatriation is especially desirable since the child's potential loss of status and identity is even greater. Although few aboriginal Canadian communities

have formal court systems, transfers should be encouraged wherever a suitable aboriginal agency or tribunal exists, or else to the appropriate Canadian forum.

17. Since aboriginal Canadians generally lack financial resources on the level enjoyed by U.S. tribal councils, provision also must be made for intervention by the Government of Canada, which has both an interest in, and legal responsibility for its aboriginal citizens. The Minister responsible for section 91(24) ("Indians, and lands reserved for Indians") of the British North America Act handles Indian, Inuit and Metis matters generally. At present, this is the Minister of Indian and Northern Affairs, but this of course may change as a result of future reorganisations of the Cabinet.

18. Our proposal for a new section of ICWA follows:

NEW SECTION

Sec. 125. Aboriginal peoples of Canada.

(a) Except as provided by this section, the provisions of sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111 and 112 of this Act shall also apply to the aboriginal peoples of Canada and their children.

(b) The "Indian child's tribe," in the case of aboriginal peoples of Canada, shall be the child's Indian Act band or, if neither the child nor its parents are members of any band, the aboriginal government or most appropriate regional aboriginal organization with which the child's parents are connected by their origins or residence.

(c) Indian Act bands, other aboriginal governments, and regional aboriginal organizations may by resolution designate aboriginal organizations in Canada, or Indian tribes or Indian organizations in the United States, as agents for the purposes of this Act. Resolutions to this effect shall be delivered to, and promptly acknowledged by the Secretary, who shall publish a list of such designations annually in the Federal Register.

(d) For the purposes of section 102(a) of this Act, notice shall also be given to the Minister of the Government of Canada who is responsible for Indians and lands reserved for Indians.

(e) In any State court child custody proceeding involving an aboriginal Canadian child, the court shall permit the removal of such case to the aboriginal, provincial, or territorial court in Canada which exercises primary jurisdiction over the territory of the child's tribe, upon a petition, and absent unrevoked parental objections, as is provided for in other cases by section 101(b) of this Act.

TESTIMONY BEFORE THE SENATE SELECT
COMMITTEE ON INDIAN AFFAIRS
ON OVERSIGHT OF
THE INDIAN CHILD WELFARE ACT OF 1978

THE ALEUTIAN/PRIBILOF ISLANDS ASSOCIATION
THE COPPER RIVER NATIVE ASSOCIATION
THE KODIAK AREA NATIVE ASSOCIATION
THE NATIVE VILLAGE OF TANANA
AND
THE COOK INLET TRIBAL COUNCIL

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November 10, 1987

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

This testimony is presented on behalf of the Aleutian/Pribilof Islands Association, the Copper River Native Association, the Kodiak Area Native Association, the Native Village of Tanana and the Cook Inlet Tribal Council. Collectively these organizations represent the interests of some 25 village tribal governments stretching from the Aleutian Chain to Interior Alaska to the Copper River valley. Cook Inlet Tribal Council also represents the interests of the Alaska Native population of Anchorage, comprising some ten thousand Native people. The villages represented by APIA, CRNA, KANA and CITC include both tribes organized under the Indian Reorganization Act and tribes organized outside that Act. Each administers a wide range of social service programs benefiting the Native people within their respective regions, including programs operated by contract with the Bureau of Indian Affairs under the authority of the 1975 Indian Self-Determination Act. In addition, each either is presently or has in the past carried out programs administered under the Indian Child Welfare Act. [illegible]e Native Village of Tanana is in the forefront of a new trend in Alaska whereby larger villages are beginning to administer their 638 and Indian Child Welfare Act programs on their own after years of being served through the tribal confederations represented by the larger regional associations.

Villages in Alaska -- we customarily use the term "village" rather than tribe -- are deeply concerned as are tribes elsewhere by the uneven successes made to keep the Native family together since passage of the Indian Child Welfare Act. This Committee will recall that at the time of the Act's passage it was reported by a Task Force of the American Indian Policy Review Committee that the rate of removal of Native children from their homes and placement in foster care was 300 percent as high as the rate for non-Native foster placement. The adoption rate for Native children was 460 percent higher than non-Native children, and 93 percent of those adoptive homes were non-Native. Record-keeping by state agencies in Alaska over the years has been so poor that it is extremely difficult to determine the true rate at which Native children today are being removed from their families, placed in foster or adoptive care, and placed with non-Native families. The unreliability of the data is compounded by the virtual lack of any centralized records over the fate of Native children caught up in the so-called "voluntary" adoptive placement system that operates outside state agencies. But we do know this: Native children continue to be removed from their families at disproportionately high rates, and they continue to be placed with non-Native families in substantial numbers. While practices across Alaska are uneven, generally speaking state agencies and state courts continue to lack sensitivity to the traditional ways of Native upbringing and to life in remote rural Alaska. And private placement agencies continue to take advantage of young Native women in crisis as a ready source of children for childless white couples. We hope and trust that through these hearings Congress will carry forward the commitment made in 1978 to end these abuses by strengthening the Act.

Successful implementation of the Act in Alaska has also been thwarted by a prevailing attitude of hostility within state government to village tribal governments. As villages over the years have rekindled their tribal governments and have become increasingly active in matters affecting village children, the State has mounted a campaign in the courts to block Alaska's tribes. Taking refuge in usually sympathetic state courts, the Alaska Attorney General's office has vigorously pressed arguments that tribes somehow do not exist in Alaska, that Public Law 280-- of all statutes -- or the 1971 Alaska Native Claims Settlement Act abolished tribes in Alaska, that the Act's distinction between reservation and non-reservation children has no application in Alaska, and that villages in Alaska simply have no jurisdiction at all over the affairs of their own tribal children.

This campaign has been so successful that only last Friday the Alaska Supreme Court summarily reaffirmed its unique view that in enacting Public Law 280 and extending its provisions to

Alaska in 1959 Congress actually extinguished tribal governmental authorities over child welfare proceedings. In its new decision (a case known as In re K.E.) the Alaska Supreme Court did not even provide a legal analysis for its decision. It utterly ignored the United States Supreme Court's decision only a few short months ago in the California v. Cabazon Band case which had reaffirmed once again that Public Law 280 had no such effect. And it ignored the United States Supreme Court's decision in Iowa Mutual v. La Plante reaffirming the critical role of tribal courts in internal tribal affairs. As a result, although it is well-equipped with a tribal court, the Native Village of Tanana has been deprived the right to exercise its jurisdiction over one of its village children. The Alaska Supreme Court is now in the unique and unenviable position of being the only court in the Nation presently of the view that Public Law 280 extinguished tribal powers.

The Alaska Supreme Court is clearly wrong. But so long as its decisions remain in effect the promises of the Indian Child Welfare Act can never be fully realized for village Alaska. Perhaps the United States Supreme Court will see fit to correct these problems. If not, we can look forward to years more of litigation in the federal courts. And while we spend thousands of dollars and wait years and years for the uncertain results of such litigation, Native children in Alaska will continue to be deprived of the protections of their tribal governments which

Congress in 1978 expected and promised they would enjoy. Congress can put an end to all of this by making appropriate amendments to the Indian Child Welfare Act.

With these thoughts in mind we next discuss some of the specific areas where we believe clarifying amendatory legislation will substantially further the original purposes of the Indian Child Welfare Act.

1. Tribal Court Jurisdiction in Alaska.

According to the Act's legislative history it seems clear that Congress intended tribes such as Alaska Native villages in Public Law 280 states to exercise some measure of concurrent jurisdiction with state courts over childrens proceedings. This view was clearly expressed by the Department of Justice during this Committee's hearings on the Act. Except in Alaska, this is the prevailing view of Section 101(a) of the Act. This view is also consistent with the U.S. Supreme Court's interpretations over the years of Public Law 280 as preserving tribal powers and immunities. The Alaska Supreme Court stands alone in believing otherwise.

The Alaska Supreme Court has even suggested that Section 101 of the Act itself operated to extinguish any tribal powers in this area in Public Law 280 states. Such an interpretation of the Act is plainly absurd and completely at odds with Congress' intent in the Act to foster and protect tribal interests, not cut them back.

Tribal governments in Alaska should not be discriminated against relative to tribes in other Public Law 280 states simply by virtue of a hostile state court. The Act must be amended to make it 100 percent clear that although state courts in Public Law 280 states may enjoy some measure of greater authority over certain matters than non-Public Law 280 states, tribal court jurisdiction in such states is not in any way impaired and remains fully operational.

It is likely that in a few Public Law 280 states, and certainly in Alaska, some tribal institutions have not yet fully developed to the point where they are able or would wish to exercise complete and exclusive jurisdiction over all proceedings involving village children. In such instances, such tribes should have the option of consenting to concurrent state jurisdiction. Although this is provided for in the Association on American Indian Affairs draft proposed bill, we do not believe this option should be a matter of negotiation with the state. Requiring that tribal consent to concurrent jurisdiction be by negotiated agreement leaves open the possibility that children in need would be the innocent victims of a failure of agreement to agree between an unwilling state and a tribe lacking the resources to provide a full array of services to all its needy children.

2. Reassumption Petitions (Section 108).

Under current Section 108 a tribe in a Public Law 280 state may petition the Secretary of the Interior to reassume exclusive jurisdiction over some or all cases to the same extent as exercised by tribes in non-Public Law 280 states. We believe it is possible to amend Section 101 of the Act in such a way that Section 108 would become unnecessary. The requirement of Secretarial review and approval represents an unwarranted continuation of patronizing oversight of tribal matters by the Bureau of Indian Affairs. Each tribal government, not the Secretary, is in the best position to determine whether or not its exercise of exclusive jurisdiction in a particular area is feasible and in the best interest of its children. Moreover, the reassumption petitioning procedures are complex, burdensome, expensive and time-consuming, especially for small tribal governments like Alaska villages.

If some version of the petitioning procedures are to remain in the Act, we ask that the criteria be minimized and that the burden clearly be placed on the Secretary in the event he fails to approve a petition or fails to act within a reasonable time. Consideration should also be given to granting tribes procedural and substantive protections similar to those currently being considered by this Committee in connection with amendments to the Indian Self-Determination Act.

3. Transfer of cases from state courts to tribal courts.

The current statute only explicitly addresses transfers of cases from state courts to tribal courts where the case involves a tribal child not domiciled or resident in Indian country. This makes sense in non-Public Law 280 states because that is the one situation where a state and a tribe arguably have concurrent jurisdiction. But in Public Law 280 states a tribe and the state may have concurrent jurisdiction over some proceedings involving children domiciled or residing within Indian country. Although the Act and its legislative history acknowledge this fact, the statute does not address transferring cases from state court to tribal court in such circumstances. This inadvertent omission can easily be corrected. In doing so, the standard favoring transfer of jurisdiction of such cases to tribal court should be considerably higher than non-Indian country cases since tribes clearly have a much stronger, powerful and compelling interest in children domiciled with the tribes. In our view transfer of such cases should be mandatory and with no exceptions.

4. Voluntary proceedings.

So-called voluntary proceedings represent one of our areas of very greatest concern. Voluntary placements are typically arranged either by a private attorney or through a private adoption agency. Typical of such agencies in Alaska is Catholic Social Services. Private agencies are under enormous pressure to locate adoptive children for childless families. Income and other criteria used by such agencies in screening adoptive families almost universally operate to exclude Native American families. The stage is therefore set for adoption of Native children into non-Native families.

These agencies consistently show an utter disregard for the Indian Child Welfare Act and the values it embodies. They make no active effort to find extended family members or other Native families willing to take an unwanted Native child. They routinely have parents sign confidentiality statements, and then use those statements as a basis for not providing any tribal notice. They make no effort to provide culturally appropriate remedial or rehabilitative services to keep the parent and child together, for they do not believe they have such an obligation. Indeed, by all appearances it seems the principal objective of such agencies is to get Native families out of the way so that they can meet the demand for adoptive children.

Catholic Social Services of Anchorage provides an excellent example. That agency has handled the adoption of dozens of Native children over the past nine years since the Act's passage. In no instance have they ever provided notice of such proceedings to the child's tribe. Virtually all of these children--possibly all -- have been adopted into non-Native families. These are shocking statistics.

The Indian Child Welfare Act clearly provides for a tribal right of intervention in voluntary proceedings. The right to intervene is empty without the right to receive notice of such proceedings. The State of Alaska takes the position that the Act and fundamental due process require that such notice be given. On this issue the Alaska Supreme court agrees. Thus in cases requiring confidentiality tribes are routinely notified of the voluntary proceeding and of the tribal right to intervene, but the identity of the parties is not revealed to the tribe unless the tribe actually intervenes. But private agencies apparently believe they are above the law and refuse to provide such notices. We agree with the Association of American Indian Affairs that the notice provisions of the Act must be strengthened to make it absolutely clear that private and public agencies alike must provide tribal notices regardless of whether the proceeding is voluntary or involuntary.

Another scheme often used by private agencies to abridge parental rights is the use of relinquishment proceedings to terminate parental rights prior to the initiation of adoption proceedings. In Alaska a parent's relinquishment of parental rights can be followed by a final decree terminating those rights in as little as ten days after the relinquishment is made. Under Section 103 of the Act as presently written there is an argument (endorsed by the Alaska Supreme Court) that a parent cannot revoke his or her consent to relinquishment after the final termination decree is entered. This results in substantial loss of parental rights.

Let us explain. Private adoption agencies in Alaska are in the adoption business. Their typical pattern is to determine before the initiation of any court proceeding who the adoptive parent will be. Typically the relinquishing Native parents participate in the process of selecting the adoptive family. The agency works with the mother so that she becomes comfortable with the placement. Everyone involved knows that an adoption is underway. When the time comes to go to court the first thing the private agency does is secure and file a voluntary relinquishment of parental rights. The agencies do this rather than secure a "consent to adoption" because the relinquishment of parental rights becomes final and irrevocable after ten days; a consent to adoption only becomes final and irrevocable after the final decree of adoption. By manipulating court procedures in this manner the agencies effectively deprive parents involved in an adoption of the right to revoke their consent to the adoption up until the adoption decree is finalized. This is the prevailing practice of private agencies in Alaska, and we suspect the same is true in other states.

Where all parties to the voluntary proceedings contemplate an adoption, the Act should prohibit the use of the relinquishment process. Alternatively (and as proposed by the Association for American Indian Affairs) the law should be amended so that a relinquishment of parental rights may be revoked at any time prior to the final adoption decree, just like a consent to adoption.

Voluntary proceedings are not always as "voluntary" as they may appear. Such proceedings often involve an unwed young and troubled mother. She often feels confused, abandoned and all alone. Often as a result of the crisis surrounding her pregnancy she is unemployed. She may be drinking heavily or abusing drugs. In many cases characterizing such a mother's act of giving up her child as informed and voluntary act is to raise from over substance and to simply disregard the circumstances leading up to her situation. Yet the circumstances contributing to the lack of true voluntariness may not meet the high standard required to later void their consent. Under the combined stress of many factors such mothers are easy targets for public and private social workers either anxious to place the child with an adoptive family or searching for an easy way to protect the child from neglect and simplify the mother's life without regard to the higher value placed on preserving the family.

We believe that in most cases there is very little difference between voluntary and involuntary termination proceedings. For this reason, we believe the Act should be made abundantly clear that a parent in a voluntary proceeding has most of the same rights as a parent in involuntary proceedings, including the right to appointment of counsel, and that the public or private agency seeking the relinquishment show by clear and convincing evidence that culturally appropriate remedial and rehabilitative services have been provided to prevent the breakup of the Native family.

Loss of children through the voluntary adoption process represents a major loophole in the Act which we strongly urge the Committee to address in its deliberations.

5. Tribal notice.

Quite understandably the notice provisions of the Act were drafted with the typical reservation in mind. But as this Committee well knows Alaska is anything but typical. It often takes two weeks for notices to arrive in a village. Depending on the time of year Councilmembers may be deeply involved in subsistence hunting and fishing activities. For these and other reasons, the ten-day period is unrealistic for remote tribes and is certainly unrealistic in village Alaska. For this reason the period should be enlarged to be more realistic, and we suggest a twenty-day period.

Enlarging the notice time-frame is not a complete answer, however. Most villages throughout Alaska have social service programs benefiting tribal members administered through a regional confederation of tribes typically known as a regional association. APIA, KANA, CRNA and CITC are typical of such entities. These regional associations operate under authority of broad tribal resolutions adopted in accordance with the Indian Self-Determination Act and fall within that Act's definition of a "tribal organization". When Indian Child Welfare Act programs are administered through a grant, those programs are likewise almost universally administered by the regional "tribal" organization (as that term is defined in the Self-Determination Act). These associations have full-time staffs and considerable expertise in childrens matters. They typically work as the advocate on behalf of a village when intervening in state childrens proceedings. Given the unique situation in Alaska, we believe that implementation of the Act would be substantially enhanced if the Act required that two tribal notices be sent rather than one. That is, in addition to the notice sent to the

Village, the State should be required to sent a notice to the tribal organization administering social service or Indian Child Welfare Act programs for that village.

The State of Alaska has repeatedly stated that it is unwilling to send two notices, arguing that to do so is too expensive and burdensome. It is willing to send notices to regional associations but only if the Village specifically passes a resolution authorizing such notice and only if it can do so by dispensing with notice directly to the Village.

We do not believe that villages should be forced to give up their right to notice in order to benefit from the added security of having notices sent to the full-time staff of the regional association providing that village with children and family social services through 638 contracted programs and ICWA grants. Given the reluctance of state and private agencies to comply with anything other than the literal, bare minimum requirements of the Act (if that), we ask that the statute be explicitly amended to require that regional associations and villages receive dual notices. This could easily be done by adding the words "and tribal organization" immediately after the word "tribe" where appropriate in the Act, and defining tribal organization as that term is defined in the Indian Self-Determination Act but narrowly to cover only tribal organizations administering social service or ICWA programs on behalf of a tribe.

6. ICWA funding issues.

One of the single greatest impediments to successful implementation of the Indian Child Welfare Act in Alaska has been the inadequate and inconsistent funding of ICWA programs. Some of the other witnesses today will go into detail about these problems and we therefore only touch on some of the broader issues.

First, the Indian Child Welfare Act grant program should not be a competitive program. Competition among grantees itself can be and has been very destructive to cooperation. In Alaska over the years the Alaska Native Childrens Advisory Board collapsed in major part due to competition among tribes and tribal organizations around the State. Two or three years ago a disappointed grantee actually filed suit against other successful grant recipients because of dissatisfaction over the BIA's grant selection process. And as the Committee is aware, the BIA grant review process itself has come under substantial fire across the Nation in recent years.

Children are removed from their families year after year. Children and families have crises year after year. The need does not stop when the tribe's program is no longer funded. The Copper River Native Association's experience is typical. The

Bureau funded ICWA programs for the villages in CRNA's region in 1981 and 1982, and again in 1985 and 1986. In other years, the program simply has not existed. Although CRNA has tried to do what it can out of its 638 contract, today its ICWA program is essentially dead.

The competitive grant funding program eliminates any ability for a tribe or tribal organization to engage in long-range planning. It eliminates any continuity from year to year. It eliminates stability. And it makes it impossible for a program to evolve from year to year to gain experience. When funding fails to come because the competitive grant application was denied, positions are eliminated. Experienced people move on. A developing program is substantially diminished, or dismantled altogether. When the tribe or tribal organization has its program funded once again one or two or three years later the tribe must essentially begin from scratch.

If the Indian Child Welfare Act is to work as Congress contemplated it must have a sound funding program. And if the funding program is to work it must provide stability and predictability for tribes and tribal organization from year to year. For this reason we urge that the Committee consider eliminating the competitive aspect of these grants. Sufficient funding should be provided so that each tribe or tribal organization operating a program in Alaska can maintain a core program of services. The Committee might also consider changes so that the ICWA funding could be included in the Indian Priority System so that tribes would have the ability to prioritize a relatively greater share of their funds toward ICWA programs.

Our second concern is with the restrictions imposed unilaterally by the Bureau of Indian Affairs on how ICWA grant funds may be used. This issue has been addressed by the Association for American Indian Affairs in its testimony and we agree that the BIA's restrictions should be eliminated. ICWA funds must be available for training, technical assistance and, where necessary, legal representation for tribes to intervene, to secure transfer of cases and to generally enforce the Act's mandates. While tribes elsewhere may have other sources of revenue for such purposes, villages in Alaska have no source of independent funds.

We appreciate that even if these changes are made, funding is unlikely to be sufficient for tribes to employ legal counsel in every child custody proceeding. Tribes unable to afford counsel, however, should not be denied the right to participate at all. We believe the Committee should look carefully at the problem of lack of legal representation for tribes. One partial solution might be to expressly authorize tribal representatives to appear in state court proceedings on behalf of the tribe without counsel. Although many state courts allow tribes to participate in this way, often objections are raised by state attorneys that the tribal representative is engaged in the unauthorized practice of law. Where accepted, this effectively denies the tribe any participation whatsoever.

Lastly, the Act should be amended to make clear that the Section 201 program is to be administered in Alaska. For virtually all other purposes the Indian Health Service and the Bureau of Indian Affairs have historically treated Alaska as a reservation. Indeed, the "reservation" provisions of the Indian Child Welfare Act apply to Alaska by virtue of the inclusion in the "Indian country" definition of "dependent Indian communities" which covers Alaska villages. And yet, when it comes to funding the Department of the Interior has consistently denied Section 201 funds in Alaska. The failure to properly administer the Section 201 grant program compounds the consequences of lack of adequate funding and unpredictable grant award decisions under Section 202. Tribes and tribal organizations in Alaska should be eligible for funding under Section 201 to the same extent as reservation-based tribes and tribal organizations elsewhere in the Country.

7. Alaska-specific provisions.

The current law contains provisions unique to Alaska in the definitional section for "Indian" and "Indian tribe". We believe that these sections could possibly be improved. For instance, the current definition of "Indian" is ambiguous in its application to Alaska Natives who were born after December 17, 1971 (termed "new-born Natives") and were therefore not enrolled as shareholders to a regional corporation under the Alaska Native Claims Settlement Act. Although they are included to the extent they are members of a tribal village, Congress in 1978 intended the Act to provide even wider protections for Alaska Natives. Consideration should be given to reworking the definition to include new-born Natives. Also, there appears to be some potential inconsistency between the shareholder provision in the definition of "Indian", and the "Native village" provision in the definition of "Indian tribe". We would be pleased to work with the Committee in reexamining these definitions to be sure that they accomplish Congress' intended purpose of extending the Act's protections to all Alaska Natives.

The Indian Child Welfare Act was intended to curb the flight of Indian children from their families and their tribal heritage. Certainly it cannot be denied that some progress has been made since 1978, and that the placement preference provisions have had a positive impact. But this has not been easy, and considerable litigation has multiplied in Alaska and elsewhere as state and private agencies continue to resist complying fully with the letter and spirit of the Act. Disturbingly, in Alaska Native children are now removed from their families in far greater numbers than was the case in 1978. In short, while some progress has been made much more remains to be made before we can be satisfied that we have accomplished the lofty but clearly achievable goals set forth in the Act. We look forward to working closely with the Committee to develop amendments which will strengthen the Act, reduce the level of litigation, and ultimately improve the stability of Native families and the future of Native American tribes through their children. We thank the Committee for the opportunity to present this testimony.

Select Committee of Indian Affairs
on the Implementation of P.L. 95-608
The Indian Child Welfare Act

The State of Arizona supports the intent of the Act to prevent unwarranted breakup of Indian families and to give tribal governments authority in determining child custody matters.

The Act more clearly delineates and defines the respective roles of tribal governments, states, and federal agencies. The act also provides for the cooperative effort of all parties involved.

This legislation has significantly improved the governmental capacity of tribal governments and has created productive working relationships between the State of Arizona and tribal governments by promoting intergovernmental agreements.

The Arizona Department of Economic Security (DES) facilitated and participated in the initial intergovernmental relationship and continues to be very supportive of such endeavors. Through a joint effort of DES, tribal governments, and the Inter-Tribal Council of Arizona (ITCA), the following was accomplished:

o DES has employed an Indian Child Welfare Specialist to mediate services for Indian children. The Indian Child Welfare Specialist works with each tribe in Arizona to coordinate and promote social services to Indian children who reside both on and off Indian reservations.

- The Arizona State Legislature has appropriated funds for the past three years to develop on-reservation child-abuse/neglect prevention and treatment programs for 13 tribes through intergovernmental agreements. As a result, very innovative community based programs have developed on reservations which otherwise would not exist.
- Arizona has actively supported the development of a Tribal Child Protective Services Academy which has recently graduated 35 tribal workers. The training is modeled after the state child protective services academy curriculum and the professional trainers are the same utilized by the state. The ITCA, the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, and the Phoenix area BIA Social Services co-sponsor this activity.
- DES has participated in sponsoring an annual Indian child and family conference for the last four years. These conferences have been co-sponsored by ITCA, the Arizona State University (ASU) School of Social Work, and the Phoenix area BIA. The purpose of these conferences are to define tribal, state and federal roles in Indian child and family services and to promote an exchange of knowledge of social services focused on Indian children and families.
- DES, ITCA, and two tribal governments are currently involved with the ASU School of Social Work in developing a model curriculum for child welfare workers serving Indian communities which brings together the public child welfare providers in Arizona and the 20 Indian tribes.

Areas of concern regarding the Indian Child Welfare Act are as follows:

- The Indian Child Welfare Act addresses prevention of placement and stresses the importance of providing family support services prior to removing and placing a child in out-of-home care. The Act requires that active efforts be made to prevent placements and reunify families. Under the Act, the court must be satisfied that active efforts have been made to provide remedial services and rehabilitative programs. These have proven unsuccessful. Without justification that these efforts have been made, the child may not be removed.

  A major distinction between the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) relates to enforcement and federal monitoring. No penalties exist for failure to comply with the active efforts provision of the Indian Child Welfare Act, other than the stipulation that the child may not be removed. There is federal monitoring of agency compliance with the reasonable efforts provision under the Adoption Assistance and Child Welfare Act (P.L. 96-272), and there are financial penalties for failure to comply.

- The Act requires strengthening in the area of voluntary placements (Section 103.a). Arizona has experienced the relinquishment of many Indian infants to private adopting agencies and to non-Indian individuals. This has created a concern as to whether Indian Health personnel inform the parents of the Indian Child Welfare Act and the long term impact of the relinquished child with respect to the tribal concepts of assuring Indian children their full rights of cultural heritage and membership in the tribe.

Tribes do not require notice when a consent has been executed under Section 103 nor are placement preferences provided to promote the best interests of Indian children by maintaining Indian children intact with Indian families.

o The notification provisions require further coordination between tribes and states. Tribal response to notification of hearings needs to be strengthened and coordinated to ensure tribal intervention and participation. Some tribes have developed a separate office or designated specific staff to assume the responsibility of reviewing cases where the state has given notification. For tribes which have structured their responsibilities to respond to notifications, cases flow through the process much easier than those cases where the tribe does not have a formal mechanism to review and respond.

It is the belief that many tribes would more readily request transfers of jurisdiction to tribal courts if resources were available on or near the reservation for children with special needs. Tribes must be encouraged and given the support to develop resources for special-needs children who are otherwise deferred to the states simply because of the lack of resources on or near reservations.

o Active efforts to recruit Indian foster and adoptive families, must be supported by tribes and states in order to strengthen the placement preferences outlined by the Act.

TOHONO O'ODHAM NATION

WRITTEN TESTIMONY

INDIAN CHILD WELFARE ACT OVERSIGHT HEARINGS

In 1978 the Indian Child Welfare Act was passed in an effort to protect the best interest of Indian children and to maintain the stability of Indian families. Inherent in the act are problems of implementation and accountability.

The Tohono O'odham Nation has actively utilized the Indian Child Welfare Act to regain custody of its children. Implementation, many times has been difficult due to different interpretations of the act. The law appears to allow too much leeway for state courts to interpret the law as they see fit without regard to the Indian child or Indian tribes. This has contributed to the continued practice of placing Indian children with non Indian families. It has also been our experience that non Indian courts and agencies are ignorant of the Act. Too much time and money has been and is being spent on educating these individuals. The context of the law along with its historical ramifications should be a part of every law school and social work education. The objectives of the law cannot be accomplished if state courts and agencies are not willing to recognize the law.

The following amendments to the Indian Child Welfare Act will assist the Tohono O'odham Nation as well as other Indian nations to accomplish the intent of the Act which is to protect Indian children and maintain Indian families.

Section 4 - 1 Child Custody Proceeding shall mean and include:

I. "Foster Care Placement"

> "Which shall mean any action removing an Indian Child from its parents or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parents or Indian custodian cannot have the child returned upon demand but where parental rights have not been terminated."
>
> > Amended to include any voluntary action or proceedings initiated by parent or custodian.

IV. "Adoptive placement" which shall mean the permanent placement of an Indian child for adoption including any action resulting in a final decree of adoption."

Amended to include any voluntary proceeding initiated by parent or custodian whether it be through a state agency or a private agency for adoption.

Section 101 - 5 Indian Child's Tribe means:

A. "The Indian tribe in which the Indian child is a member or eligible for membership or

B. In the case of a Indian child who is a member of or eligible for membership in more than one tribe the Indian tribe with which the Indian child has the more significant contacts."

Amended to state that the tribe determined to have the more significant contact with the child may designate as the Indian child's tribe, any other tribe in which the child is a member of or eligible for membership.

Title I - CHILD CUSTODY PROCEEDING

Section 101 B

"In any state court proceedings for the foster care placement of or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe absent objection by either parent upon the petition of either parent or the Indian custodian or the Indian child's tribe, provided that such transfer shall be subject to the declination by the tribal court of such tribe."

Amended to state that the petition may be presented to the court orally or in written form by either parent, the Indian custodian or the Indian child's tribe. Also to strike the "good cause" clause and "enter agreement entered into under Section 109 of this act."

Section 102 A

"In any involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail, with return receipt requested of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined such notice shall be given to the Secretary in like matter who shall have fifteen days after receipt to provide the requested notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodial and the tribe or the secretary, provided that the parent or Indian custodian of the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceedings."

> Amended to state that any child custody proceeding involving an Indian child in state court is subject to notification by the party initiating the child custody proceeding to the parent, the Indian custodian and the Indian child's tribe. Also to include that the party initiating the proceedings must make reasonable efforts to identify the tribal affiliation of the child before sending notice to the Secretary. If notice is sent to the Secretary then no proceedings shall be held until at least thirty days after receipt of notice by the Secretary.

Section 102 C

"Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child shall have the right to examine all reports or documents filed with the court upon which any decision with respect to such action may be based."

> Amended to state that any party in any child custody proceeding under state law involving an Indian child shall have the right to examine and copy all reports or other documents upon which any decision with respect to such action may be based which includes the case record and any other documents that were reviewed in preparation for giving oral testimony in a hearing.

Section 103 A

"Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or the Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation, in English, or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to or within ten days after birth of the Indian child shall not be valid."

> Amended to include that any Indian parent or custodian may not waive any of the provisions of this act and the

inclusion of a waiver provision in any consent executed by an Indian parent or custodian shall render that consent invalid. Also to include that the Indian child's tribe shall be notified of any pending voluntary consent proceedings pursuant to this section.

Section 105 A

"In any adoptive placement of an Indian child under state law a preference shall be given in the absence of good cause to the contrary to a placement with:

1. A member of the child's extended family.

2. Other members of the Indian child's tribe.

3. Other Indian families."

> Amended to state that in any adoptive placement of an Indian child under state law placement preference shall be made in accordance with the following order of placement:
>
> 1) A member of the child's extended family.
>
> 2) Other members of the Indian child's tribe.
>
> 3) Other Indian families.

Section 106 A

"Notwithstanding state law to the contrary whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing in a proceeding subject to the provision of Section 102 of this act that such return of custody is not in the best interest of the child."

> Amended to state that the public or private agency or individual seeking to place the child for adoption in accordance with the provisions of Section 102a shall notify the biological parent, prior Indian custodian, and the Indian child's tribe of the pending placement proceeding and their right of intervention, their right to petition for transfer of jurisdiction to the tribal court and the parents or Indian custodian's right to petition for return of custody.

Section 106 B

"Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive or adoptive placement such placement shall be in accordance with the provisions of this act, except in the case where the Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed."

> Amended to state that whenever an Indian child is removed from a foster care placement or institution for the purpose of further foster care preadoptive, or adoptive placement, or when a review of any such placement is scheduled, such placement shall be in accordance with the provisions of this act, including notice to the child's biological parents and prior Indian custodian, provided that the parental rights have not been terminated and the Indian child's tribe.

Title III - Record Keeping, Information, Availability, and Timetables

Section 301 A

"Any state court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this act shall provide the secretary with a copy of such decree or order together with such other information as may be necessary to show:

1. The name and tribal affiliation of the child.
2. The names and addresses of the biological parents.
3. The names and address of the adoptive parents.
4. The identity of any agency having filed such information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parents or parent that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained as such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552) as amended.

> Amended to state that any state court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this act shall provide the secretary and the Indian child's tribe with a copy of such decree or order together with such other information as may be necessary to show ...

Section 301 B

"Upon request of the adopted Indian child over the age of 18 the adoptive or foster parents of an Indian child, or an Indian child, the secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting enmity the secretary shall certify to the Indian child's tribe where the information warrants that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe."

> Amended to state that the Secretary shall disclose the names and tribal affiliation if any of the child's biological parents and any other information that may be necessary for the Indian child to secure membership in the tribe in which the child may be eligible for membership. Also to state that where the documents relating to such child contain an affidavit from the biological parent or parents requesting that their identity remain confidential, and the biological parent is still alive at the time of the request and the affidavit has not been revoked the secretary shall provide to the Indian child's tribe such information about the child's parentage and other circumstances of birth as required by such tribe to determine the child's eligibility for membership under the criteria established by the tribe, provided that an affidavit of one parent requesting such confidentiality shall not affect the right of the Indian tribe, the adoptive or foster parents, or an Indian tribe to identify information with respect to the other parent, provided further that nothing in this section shall be deemed to affect any rights of an adoptive Indian child under Section 107 of this act.

HOU HAWAIIANS
A TRIBAL OHANA DEDICATED TO THE SURVIVAL OF THE HAWAIIAN PEOPLE
P.O.BOX 721 HALEIWA, HAWAII 96712

HOU PARA LEGAL SERVICE

October 30, 1987

Honorable Senator Daniel K. Inouye
Chairman, Select Committee on Indian Affairs
7.2 Hart, Senate Office Building
Washington, D.C. 20510-1102

Aloha Senator Inouye,

The HOU Para Legal Service is most pleased to hear you will be chairing the Senate Select Committee on Indian Affairs hearings on the Indian Child Welfare Act (ICWA).

The family court experience of the HOU Para Legal Service over the last four years definitely indicates the socio-economic problems facing the Native Hawaiian families of 50% aboriginal blood or more as defined in the Hawaiian Homestead and 5F provisions of the Statehood Admissions Act strongly parallels those suffered by their American Indian and Alaskan Native counterparts. In over half of the family court cases foster or adoptive Native Hawaiian children are being placed in non-Native Hawaiian homes, often resulting in the permanent breakup of the family and the child's alienation from his rightful cultural identity.

We recognize there has been other legislation concerning those of any amount of Hawaiian blood. In this instance, however, we believe the recommendations in the attached Exhibit A would satisfy Congress' concerns and be the most practical and beneficial way to write this particular legislation.

Please include letter with exhibit in the IWCA hearing record. Mahalo Nui Loa for your consideration in this matter.

Respectfully,

Kamuela Price
Executive Director
HOU Para Legal Service

KP:cb
Encl.
bcc: Bert Hirsch

EXHIBIT A

SUPPLEMENT TO INDIAN CHILD WELFARE ACT

RATIONALE FOR INCLUSION OF NATIVE HAWAIIANS IN INDIAN CHILD WELFARE ACT

The problem facing the indigenous Hawaiian parent and child is similar to that suffered by American Indian and Alaskan Native people. Mainly it is a critical need for the United States to excercise a trust responsibility in protecting her aboriginal people's entitlements under U.S. laws and policies. In over half the family court cases in Hawaii, foster or adoptive Native Hawaiian children are being placed in non-Native Hawaiian homes, often resulting in the permanent breakup of the family and the child's alienation from his rightful cultural identity.

CONGRESSIONAL FINDINGS RELATIVE TO NATIVE HAWAIIANS

(1) that section 5F of the Hawaii Admissions Act of 1959 in sub sections (B) and (C) is a condition of Statehood whereby the the United States Congress mandates the state of Hawaii to carry out the trust responsibilities defined therein;

(2) that Congress through statute, the above-mentioned Statehood compact and the general course of dealing with Native Hawaiians has assumed the responsibility for the protection and preservation of Native Hawaiians and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of the Hawaiian "OHANA" tribal

family than their children and that the United States has a direct interest as a co-trustee in the Hawaii Admission Act in protecting Native Hawaiian children's relationship to the "OHANA" tribal family;

(4) that an alarmingly high percentage of Hawaiian families are broken up by the removal, often unwarranted, of their children from them by non-Native Hawaiian public and private agencies and that an alarmingly high percentage of such children are placed in non-Native Hawaiian foster and adoptive homes and institutions; and

(5) that the state, exercising its recognized jurisdiction over Native Hawaiian child custody proceedings through administrative and judicial bodies, has often failed to recognize the essential "OHANA" tribal family relations of Hawaiian people and the cultural and social standards prevailing in Native Hawaiian communities and families.

DEFINITIONS

(1) Native Hawaiian means any person who is 50% aboriginal blood or more or whose parent or legal custodian is a Native Hawaiian as defined in the Hawaiian Homestead and 5F provisions of the Statehood Admission Act.

(2) Native Hawaiian child is any unmarried person who is under the age of 18 and is either A) a Native Hawaiian of 50% aboriginal blood or more or B) under the custody or quardianship of a Native Hawaiian of 50% aboriginal blood or more.

(3) Native Hawaiian means any person as defined in the Hawaii Admissions Act in essence those of 50% aboriginal blood or more.

(4) Native Hawaiian child means any unmarried person who is

under 18 years of age and of 50% aboriginal blood or more or whose parent or custodian is of 50% aboriginal blood or more.

(5) Native Hawaiian child's "OHANA" means the family or extended family of the child who live together or are recognized by one another as immediate family.

(6) Native Hawaiian custodian means any Native Hawaiian person who has legal custody of a Hawaiian child under OHANA custom or State Law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

(7) Native Hawaiian "organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Native Hawaiians, or a majority of whose members are native Hawaiians.

(8) Native Hawaiian OHANA tribal group means any Native Hawaiian family, extended family OHANA, or other organized group or community of Native Hawaiians recognized as eligible for the services provided to Native Hawaiians by ANA or any other Federally-authorized agency.

(9) Parent means any biological parent or parents of a Native Hawaiian child or any Native Hawaiian person who has lawfully adopted a Hawaiian child including (hānai) adoption under "OHANA" tribal law or custom. It does not include the unwed father where paternity has not been acknowledged.

(10) Hawaiian Homestead and 5F lands means those lands covered under the Hawaii Admission Act and any public lands not covered under such sections, title to which is either held by the United States in trust for benefit of any Native Hawaiian organization or individual or held by a Native Hawaiian organization or individual subject to a restriction by the United States against

alienation.

(11) Secretary means the Secretary of the Interior and

(12) The State of Hawaii Courts will have exclusive jurisdiction of a Native Hawaiian child who resides in any of the Hawaiian islands.

Pending Court Proceedings

(a) Notice time for commencement of proceeding and additional time for preparations. In any involuntary proceeding in a state court where the court knows or has reason to know that a Native Hawaiian child is involved, the party seeking the foster care placement or termination of parental rights for a Hawaiian child shall notify a biological parent or prior Native Hawaiian custodian by registered mail with return receipt requested of the pending proceedings and of their rights to legal representation. If the identity or the location of the parent or prior Native Hawaiian custodian cannot be determined such notice shall then be given to the Secretary in same manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or prior Native Hawaiian custodian. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or prior Native Hawaiian custodian or the Secretary provided, that the parent or prior Native Hawaiian custodian shall upon request, be granted up to twenty additional days to prepare for such proceedings.

(b) Appointment of Counsel In any case in which the court determines indigency, the parent or Native Hawaiian custodian shall have the right to court-appointed counsel for the child upon a finding that such appointment is in the best interest of the child.

(c) Priority in Appointing Counsel will be given only to recognized Native Hawaiian non-profit advocacy agencies, such as the Native Hawaiian Legal Corporation or the Hou Para Legal Service.

- Where State law makes no provision for funding such Native Hawaiian legal advocacy agencies, the Court shall promptly notify the Secretary upon appointment of counsel to the Native Hawaiian advocacy agency, and upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921.

(d) Examination of reports or other documents Each party to a foster care placement or termination of parental rights proceeding under State law involving a Native Hawaiian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(e) Remedial services and rehabilitative programs; preventive measures Any party seeking to effect a foster care placement of, or termination of parental rights to, a Native Hawaiian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native Hawaiian family and that these efforts have proven unsuccessful.

(f) Foster care placement orders; evidence; determination of damage to child No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Native Hawaiian custodian is likely to result in serious emotional or physical damage to the child.

(g) Parental rights termination orders; evidence; determination of damage to child No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Native Hawaiian custodian is likely to result in serious emotional or physical damage to the child.

CROSS REFERENCES

Interpretive Notes And Decisions

If party wishes to defeat biological parent's petition for return of custody, he or she must prove that such return is not in child's best interest by showing (1) that remedial and rehabilitative programs designed to prevent breakup of Native Hawaiian family had been implemented without success and (2) that such return of custody is likely to result in serious harm to child: serious harm element must be established by testimony of qualified expert witnesses.

Parental rights to Native Hawaiian child pursuant to Native Hawaiian Child Welfare Act may not be terminated on basis of finding that evidence was clear and convincing that continued custody would likely result in severe emotional and physical damage to child: the Act requires proof beyond reasonable doubt.

Under Indian Child Welfare Act dependency and neglect must be proved by clear and convincing evidence. People In Interest of S.R.

Expert witness requirement was fulfilled by testimony of social worker with 4 years experience who has BA degree in social work and has had contact with Native Hawaiians on regular basis, and testimony of director of children's shelter and resource center who has BS degree in social work and one year towards her master's degree since approximately 30 percent of children utilizing shelter will be Native Hawaiians.

1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents. Where any parent or Native Hawaiian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Native Hawaiian custodian. The court shall also certify that either the parent or Native Hawaiian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Native Hawaiian custodian understood. Any consent given prior to, or within ten days after, birth of the Native Hawaiian child shall not be valid.

(b) Foster care placement; withdrawal of consent. Any parent or Native Hawaiian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Native Hawaiian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, a Native Hawaiian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations. After the entry of a final decree of adoption of a Native Hawaiian child in the State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress, and the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

CROSS REFERENCES

1914. PETITION TO COURT OF COMPETENT JURISDICTION TO INVALIDATE ACTION UPON SHOWING OF CERTAIN VIOLATIONS

Any Native Hawaiian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Native Hawaiian custodian from whose custody such child was removed, and the Native Hawaiian child's OHANA may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102 and 103 of this Act.

1915. PLACEMENT OF INDIAN CHILDREN

(a) Adoptive placements; preferences. In any adoptive placement of a Native Hawaiian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with

(1) a member of the child's extended family;

(2) other members of the Native Hawaiian child's OHANA; or Native Hawaiian OHANA extended family; or

(3) other Native Hawaiian families.

(b) Foster care or preadoptive placements; criteria; preferences. Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with

(i) a member of the Native Hawaiian child's OHANA extended family;

(ii) a foster home licensed, approved, or specified by the Native Hawaiian child's OHANA;

(iii) a Native Hawaiian foster home licensed or approved by an authorized non-Native licensing authority, or

(iv) an institution for children approved by a Native Hawaiian OHANA or operated by an Native Hawaian organization which has a program suitable to meet the Native Hawaiian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Native Hawaiian child's parent custodian or OHANA shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Native Hawaiian child or parent shall be considered: Provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable to Parent, Custodian or OHANA. The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Native Hawaiian community in which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability. A record of each such placement, under State law, of a Native Hawaiian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary of the Native Hawaiian OHANA, parent or custodian.

1916. RETURN OF CUSTODY

(a) Petition; best interest of child. Notwithstanding State law to the contrary, whenever a final decree of adoption of a Native

Hawaiian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Native Hawaiian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of the Act.

(b) Removal from foster care home; placement procedure. Whenever a Native Hawaiian child is removed from a foster care home or institution for purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where a Native Hawaiian child is being returned to the parent or Native Hawaiian custodian from whose custody the child was originally removed.

1917. OHANA AFFILIATION INFORMATION AND OTHER INFORMATION FOR PROTECTION OF RIGHTS FROM OHANA RELATIONSHIP; APPLICATION OF SUBJECT OF ADOPTIVE PLACEMENT; DISCLOSURE BY COURT

Upon application by a Native Hawaiian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the OHANA affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's OHANA relationship.

1918. Not Applicable

1919. Not Applicable

1920. IMPROPER REMOVAL OF CHILD FROM CUSTODY; DECLINATION OF JURISDICTION; FORTHWITH RETURN OF CHILD: DANGER EXCEPTION

Where any petitioner in a Native Hawaiian child custody proceeding before a State court has improperly removed the child from custody of the parent or Native Hawaiian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Native Hawaiian custodian unless returning the child to his parent or Native Hawaiian custodian would subject the child to a substantial and immediate danger or threat of such danger.

1921. HIGHER STATE OR FEDERAL STANDARD APPLICABLE TO PROTECT RIGHTS OF PARENT OR NATIVE HAWAIIAN CUSTODIAN OF NATIVE HAWAIIAN CHILD

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Native Hawaiian custodian of a Native Hawaiian child than the rights provided under this title (   ), the State or Federal court shall apply the State or Federal standard.

1922. EMERGENCY REMOVAL OR PLACEMENT OF CHILD; TERMINATION; APPROPRIATE ACTION

Nothing in this title (   ) shall be construed to prevent the emergency removal of a Native Hawaiian child from his parent or Native Hawaiian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the jurisdiction of the appropriate Native Hawaiian OHANA, or restore the child to the parent or Native Hawaiian custodian, as may be appropriate.

1923. EFFECTIVE DATE ??

None of the provisions of this title (   ), except sections (   ), shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Interpretive Notes and Decisions

NATIVE HAWAIIAN CHILD AND FAMILY PROGRAMS

1931. GRANTS FOR ON OR NEAR NATIVE HAWAIIAN DOMICILES

(a) Statement of purpose; scope of programs. The Secretary is authorized to make grants to Native Hawaiian OHANAs and organizations in the establishment and operation of Native Hawaiian child and family service programs on or near Hawaiian Homestead or other domicile lands and in the preparation and implementation of child welfare codes. The objective of every Native Hawaiian child and family service program shall be to prevent the breakup of Native Hawaiian families and, in particular, to insure that the permanent removal of a Native Hawaiian child from the custody of his parent or Native Hawaiian custodian shall be a last resort. Such child and family service programs may include, but are not limited to

(1) a system for licensing or otherwise regulating Native Hawaiian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Native Hawaiian families and for the temporary custody of Native Hawaiian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the OHANA family in the disposition of domestic relations and child welfare matters;

(6) education of State judges and staff in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Native Hawaiian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Native Hawaiian families involved in OHANA, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program. Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (   ) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for us under this Act (   ). The provision or possiblity of assistance under this Act (   ) shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act (   ) or any other federally-assisted program. For purposes of qualifying for assistance under a federally-assisted program, licensing or approval of foster or adoptive homes or insitutions by a Native Hawaiian OHANA shall be deemed equivalent to licensing or approval by a State.

Interpretive Notes and Decisions

1932. GRANTS FOR OFF-RESERVATION PROGRAMS FOR ADDITION SERVICES

The Secretary is also authorized to make grants to Native Hawaiian organizations to establish and operate off-reservation Native Hawaiian child and family service programs which may include, but are not limited to

(1) a system for regulating, maintaining, and supporting Native Hawaiian foster and adoptive homes, including a subsidy program under which Native Hawaiian adoptive children may be provided support comparable to that for which they would be eligible as

Native Hawaiian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Native Hawaiian families and Native Hawaiian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Native Hawaiian families involved in child custody proceedings.

1933. FUNDS FOR ON AND OFF HAWAIIAN HOMESTEAD LANDS

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments. In the establishment, operation, and funding of Native Hawaiian child and family service programs, both on and off Hawaiian Homestead lands the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under (?)

History; Ancillary Laws and Directives

1934.

1951. INFORMATION AVAILABILITY TO AND DISCLOSURE BY SECRETARY

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from (5 USCS 552). The State court entering a final decree or order in any Native Hawaiian child adoptive placement after the date of enactment of this Act (5 U.S.C. 552), shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show

(1) the name and OHANA family affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Informaiton Act (5 U.S.C. 552), as amended (5 USCS 552).

(b) Disclosure of information for enrollment of Native Hawaiian child in OHANA or for determination of member rights or benefits; certification of entitlement to enrollment. Upon the request of the adoptive Native Hawaiian child over the age of eighteen, the adoptive or foster parents of a Native Hawaiian child, or a Native Hawaiian OHANA, the Secretary shall disclose such information as may be necessary for the enrollment of a Native Hawaiian child in the OHANA in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Native Hawaiian child's OHANA, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such OHANA family.

1952. RULES AND REGULATIONS

Within one hundred and eighty days after the enactment of the Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act (   ).

Miscellaneous Provisions

1961. EDUCATION; DAY SCHOOLS; REPORT TO CONGRESSIONAL COMMITTEES; PARTICULAR CONSIDERATION OF ELEMENTARY GRADE FACILITIES

(a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Native Hawaiian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Native Hawaiian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act (Nov. 8, 1978). In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

OVERSIGHT HEARING ON THE INDIAN CHILD WELFARE ACT BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

STATEMENT OF WILLIE KASAYULIE - CHAIRMAN OF THE ALASKA NATIVE COALITION

November 10, 1987

The Alaska Native Coalition is the only state-wide Native organization dedicated solely to representation of the views of tribal governments from throughout Alaska. I have been the Chairman of the Coalition since its inception in 1985. The Coalition includes over one hundred tribal governments or village-based organizations composed of tribal governments. We came together because existing state-wide organizations primarily represent the views of Regional corporations formed under the Alaska Native Claims Settlement Act (ANCSA). Our members include the Tanana Chiefs Conference (forty-six villages from interior Alaska), the Western Alaska Tribal Council (sixteen villages from the Bering Straits region) and scores of local tribal governments. These tribes are the intended beneficiaries of the Indian Child Welfare Act and it is our membership which deals with the matters governed by the Act on a day to day basis.1

The approximately 200 Native villages in Alaska have Traditional or Indian Reorganization Act councils which govern their communities. We count as tribal members all Native residents of the community - not just those who hold stock in Native corporations by virtue of being alive in 1971. These tribal governments receive BIA services and are

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1 My remarks set out general problems with the implementation of ICWA in Alaska. The more specific suggestions offered to this Committee by the Aleutian/ Pribilof Islands Association, et al. are supported by the Coalition.

recognized as tribes by the United States government. It is the tribe which holds us together and which must retain the children who are our members and our future. Our ability to implement ICWA has been hindered by the unique terms of the ANCSA and arguments that it somehow removed tribal powers, or is proof that Congress thinks tribes don't exist in Alaska. Until it is made clear that ANCSA had no effect on tribal powers and that Native village tribal governments have the same status as lower forty-eight tribes, the promise held out by the ICWA can not be achieved. State government is extremely hostile to tribal authority. It intervenes in litigation on behalf of private parties who are opponents of tribal sovereignty. The state court system has joined in opposing tribal authority through hostile decisions - containing little credible legal analysis - undermining tribal government.

As a result of these hostile decisions, the state courts in Alaska refuse to transfer Indian Child Welfare Act cases to tribal courts - even when the events leading to the state court action arise in the Native village itself. The state supreme court interprets Public law 280 as having eliminated tribal authority over domestic relations matters and presumably all other matters as well. They buttress this claim by reading section 108 of the ICWA as an indication that Congress intended such a result when it enacted P.L. 280. Thus, state courts are precluded from transferring cases involving tribal members to tribal courts. This erroneous state court decision cripples tribal efforts to make ICWA work in Alaska. It must be corrected, as must notions that ANCSA affected tribal powers.

ANCSA extinguished tribal claims of aboriginal title. It made no mention of tribal powers. The assets received in exchange for the extinguishment of title were not vested in the tribes, but in (theoretically) profit making corporations governed by state law. The tribes were given no direct role in implementing the settlement, yet ANCSA is frequently used by opponents of tribal governments as a sword to deny tribal rights and powers. The Coalition is concerned that Congress has neglected the critical role played by tribes in Alaska. We have always been a tribal people and the establishment of corporations has not changed us. The "1991 amendments" passed by this Congress reflect an intent to protect the resources gained in the settlement of our tribal claims. At the same time, however, our efforts to amend ANCSA to provide corporations with the authority to transfer corporate assets to tribal governments were unsuccessful. Our opponents insisted that any grant of such authority be accompanied by language diminishing tribal powers. Such treatment is unfair to tribes and is inconsistent with other legislation, such as ICWA, intended to strengthen or preserve tribal powers and governments.

The state and other opponents of the tribes also claim there is no Indian country within which to exercise tribal powers. The population of our villages is overwhelmingly Native and the land in and around the villages is predominately owned by Native corporations established under ANCSA. The Department of Interior administers the federal Indian liquor laws in Alaska just as it does in the rest of Indian country. Indeed, the only written legal opinion of the Department on the matter concludes that Native villages are dependent Indian communities and thus Indian country under 18 U.S.C. 1151(b). Yet ever since statehood, Alaska has denied the existence of Indian country and battled all tribal efforts at self-determination and the exercise of tribal authority.

It is no exaggeration to say that the state's view of Native rights is well behind that of the lower forty-eight states. The state's hostility to tribal government and ICWA has been given comfort by the Alaska Supreme Court. We urge the Committee to consider amendments which recognize and confirm the existence of Indian country and tribal authority over our children. We would be pleased to assist the Committee in developing such amendments.

SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

HEARING ON
THE INDIAN CHILD WELFARE ACT
OF 1978

TUESDAY, NOVEMBER 10, 1987

WASHINGTON, D.C.

Statement by

John R. Lewis

Executive Director

Inter Tribal Council of Arizona, Inc.

Statement by John R. Lewis
Executive Director
Inter Tribal Council of Arizona

The Indian Child Welfare Act of 1978 was enacted to protect Indian children by establishing minimum standards for the removal of Indian children from their families and tribes. This law has resulted in the reduction of out-of-home placements of Indian children into non-Indian foster and adoptive homes. We strongly appreciate the act of Congress in establishing this major legislation which provides for assistance to Indian tribes in implementing child and family service programs.

System Development Resulting from the Act

In Arizona a number of major accomplishments have resulted in the implementation of the Act. The state has reduced the number of Indian children in foster homes under state jurisdiction from 220 in 1980 to 53 in 1986. A permanently funded Indian Child Welfare specialist position has been established through state appropriations. With discretionary funding, the state has entered into a number of joint projects to improve Indian Child Welfare service delivery with the Inter Tribal Council of Arizona and individual tribes. These have included an Indian child protective service training program, a study of child abuse and neglect on reservations in Arizona, a project to establish competencies for Indian child welfare practice, and four statewide intergovernmental conferences of service providers who directly deliver health and human services to Indian families. The state has also entered into 13 intergovernmental agreements with various tribes to prevent child abuse and neglect.

Child Custody Proceedings

Through our accomplishments we have identified a number of areas where the Act needs to be clarified. The first of these regards voluntary placement of Indian children in non-Indian homes. It has been our experience that private child welfare agencies and legal services are frequently unaware of the Act and accept voluntary placements without regard to the placement preference mandated by the Act. Young Indian mothers experiencing economic hardship in Phoenix are signing guardianship papers regarding their children which are heard in brief probate court hearings on a voluntary basis without notice being given to the affected tribes or to the State Administration of Children, Youth and Families. Young mothers are also signing powers of attorney without benefit of a court hearing. In regard to voluntary relinquishments, it has been the experience of tribes that parents do not always understand the papers that they signed.

There have also been periodic difficulties with the procedures of the notification process. In one case, notices of hearings were sent to the tribal cigarette store. Juvenile court personnel and social service personnel need to coordinate better at both the tribal and state levels to improve the timeliness of the notification procedure and tribal response process

Another concern is the liberal interpretation among the States of parental objection to transfer of proceedings under section 1911 of the Act. Our understanding of Congressional intent is that parental objection to transfer of proceedings to tribal courts does not outweigh the rights of an Indian child to be raised with the benefits of tribal affiliation. However, child placement agencies appear to assume that parental objection to placement with on-reservation tribal members, automatically grants authority to place the child with off-reservation non-Indian families.

Consistent with the intent of the Act, the language in Section 1911 should be amended to take into consideration the continuance of tribal ties when looking at the best interests of the child. This should occur regradless of parental objection to the transfer of proceeding to the tribal court.

Indian Child and Family Programs

While the Act has directed state policy in regard to Indian Children, there remain many areas of unmet need. Indian children suffer from a lack of financial, human and tribal resources. For example, the state has currently only two Indian families certified for adoptive placement, and neither of these are affiliated with Arizona tribes. Eighty percent of the 53 children in State foster care in 1986 were in non-Indian homes. When a private agency inquires about placement of an Indian youngster into foster or adoptive care, resources have not been recruited nor made available.

Further, rehabilitative programs to support and strengthen families such as child day care services are non-existent in most Arizona Indian communities. This can be directly attributed to a lack of available monies to implement such services. There is also still an absence of day schools on many reservations in

Arizona. Additionally, the only boarding school available to meet the needs of older Indian children, the Phoenix Indian High School is in constant threat of being permanently closed.

Children with severe behavior or mental health problems are not being served at all. State courts in Arizona will not give full faith and credit to tribal court orders of commitment of seriously disturbed Indian youths. These children oftentimes sit in understaffed, non-therapeutic tribal jails without the benefitof medical services.

Another concern is that funding for programs established by the Act is inadequate, is based on the arbitrary scoring of competitive proposals, and provides no assurance of continuation of services from year to year. For example, the Navajo Nation, the largest tribe in the country whose child population comprises nearly one-half of the tribal membership, had Indian child welfare grant funds withheld for two consecutive years, simply because the tribe's written proposal to serve children did not score 85 points according to a panel of readers. Additionally, many small tribes are excluded from funding for services because they cannot afford to employ professional writers to develop proposals for funding. The award process for Indian Child Welfare grants hinders a rational approach to the development of services for children.

Finally, we are also concerned that many of the tribes in the Phoenix Area have not developed children's codes. Once again this is due to limited funds available.

Conclusion

The Congress in enacting the Indian Child Welfare Act of 1978 has acknowledged the importance of tribal decision making in determining the best interests of Indian children. This legislation has resulted in improved social welfare service delivery and a reduction of Indian children placed in non-Indian homes in Arizona.

Issues of voluntary placement continue to require Congressional attention. The Act needs clarification with regard to transfer of voluntary cases to tribal courts. Also a method must be developed to enforce placement preferences in voluntary proceedings.

Programs to promote the security of Indian families rely on a stable source of funding. There needs to be developed a noncompetitive, improved formula with adequate appropriations for funding all tribes to operate programs to meet the needs of their children, especially those children with special needs.

We, the tribes in the Phoenix Area wish to again commend Congress and especially the Senate Select Committee on Indian Affairs for their continued interest in the welfare of our children. We urge the committee to support continued efforts to fully implement the Act.

Hoopa Valley Business Council

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

Wilfred K. Colegrove
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

November 24, 1987

Stephen H. Suagee
Staff Attorney

ICWA Oversight Hearing
Senate Select Committee on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510-6450

Re: Testimony of the Hoopa Valley Tribe

To the Senate Select Committee:

I am a Staff Attorney for the Hoopa Valley Business Council, the federally recognized governing body of the Hoopa Valley Tribe. The Council has directed me to submit this written testimony on behalf of the Tribe and its Indian Child Welfare Program.

A. Background

The Hoopa Valley Tribe occupies and exercises governmental jurisdiction over that portion of its aboriginal territory known as the Hoopa Valley Reservation Square, in Humboldt County, California. At 90,000 acres, the Hoopa Square is the largest Indian reservation in California. The Tribe comprises approximately 1800 members, 958 of whom live on the Hoopa Square. Total population of the Hoopa Square is roughly 4300 persons, of whom 2200 are Indians.

The Hoopa ICW Program has been in existence in some form since 1981. The Bureau of Indian Affairs denied funding to the Program for FY 86, and as a result the Program was operated on a bare-bones basis from June, 1986, until this past summer, at which time renewed funding was available. Since that time, the Hoopa ICW Program has been pursuing the level of services that it provided prior to its loss of funding. Standard services include family remedial services, foster home recruitment, counseling with Mental Health staff, and monitoring of state court ICW cases involving tribal members. In addition, because I came here to establish the first on-reservation Legal Department in October 1986, the Tribe has begun to intervene as a formal party in ICW cases in state court. The Legal Department is also assisting the ICW Program in the development of a comprehensive Child Welfare Code for the Hoopa Square, which is currently in draft form.

The Tribe is also developing a Tribal Court system, the first tribal court in California. Currently the Court adjudicates cases arising under the Tribe's Fishing Ordinance, and we are in the process of extending its jurisdiction over a variety of natural resources and other civil matters. In addition, it is one of our paramount goals to develop our Tribal Court to the point where it can reassume jurisdiction over cases arising under the ICWA, pursuant to 25 U.S.C. § 1911(a) and (b).

B. Concerns of the Hoopa Valley Tribe

(1) Inconsistencies in Grant Review: The Tribe believes that its FY 86 application was denied due to inconsistencies in application of standards during the grant review process. Insufficient consideration was given to the unique socio-cultural attributes of our situation, and the need to coordinate ICW services with the development of our Tribal Court was ignored.

(2) Reservation v. Urban Programs: California has the largest Indian population of any State in the nation. Much of this population consists of off-reservation Indians, particularly in the Los Angeles area. Many of these urban Indians are from Tribes whose reservations are located in other states. Some Hoopa tribal members live off-reservation, many of them in California's northern coastal counties. Indeed, between the combined Reservation and urban population, Humboldt County has one of the highest Indian population densities of any county in the state. Although the Tribe agrees in principle that California's large population of urban Indians needs ICW program services, such services should not be implemented in any manner that results in lowered funding for reservations.

(3) State Implementation: Humboldt County social service agencies have not yet adequately implemented the ICWA. Most of their efforts have been directed at eligibility determinations; to a limited extent this is understandable because many individual Indians living in the Eureka-Arcata urban corridor are affiliated with unrecognized, terminated, or unorganized Tribes. The Hoopa Square is located in remote, rugged, mountainous terrain some fifty miles from the coast, and hence the Hoopa Valley Tribe is much less visible to state social service providers based in coastal urban areas.

Nevertheless, the Hoopa Valley Tribe knows who its members are, and can readily assist state and county agencies in making the rather perfunctory eligibility determinations regarding Indians of Hoopa descent. Our primary concern is that due to their preoccupation with eligibility, state and county agencies have given little consideration to the substance of the ICWA, and to the important tribal rights that it recognizes.

For instance, neither the Humboldt County Superior Court, nor the county and state agencies, have seriously examined the ICWA's frequent requirement that judicial decisions be based on testimony of qualified expert witnesses. The Tribe is currently involved in a case where the court relied on the opinions of experts who the Tribe believes lack the necessary expertise in and sensitivity to Indian cultural values. Of the many social worker/psychologist reports prepared for the court in this case, none of them say anything about cultural issues, development of an Indian identity, or the rights of a Tribe to see that its children grow up in the tribal community.

Moreover, in general the court and agencies do not realize that Congress has defined some of the elements of "the best interests of an Indian child," and that these elements restrict the court's ability to apply the generic state law standard of "best interests of the child."

Funding must be made available to train and certify judges and state and county social workers and other agency personnel. Tribal Courts should be involved in what should be an ongoing training process to facilitate exchange of information, and to educate judges and agency staff regarding the role and competence of Tribal Courts. In addition, agency personnel need to be educated regarding the importance of the Indian extended family, so that confidentiality cannot be raised as a barrier to the involvement of extended family members who may have a legitimate interest (such as providing foster care) in an ICW case.

(4) ICWA Amendments: The Hoopa Valley Tribe supports enactment of the amendments drafted by the Association on American Indian Affairs. Some of these amendments address problems and concerns identified herein. Some of the proposed amendments would provide added proce-

dural safeguards, close loopholes in the original Act, and effectively reverse certain anti-tribal results obtained in various state courts that clearly undermine the policy of the Act.

C. **Conclusion**

The ICWA is a strong Congressional statement of national policy regarding the rights of Indian children, families, and Tribes. As long as significant implementation responsibilities rest with the State, there will be need for refinement and diligent oversight. We thank you for the opportunity to provide this written testimony.

Sincerely,

Stephen H. Suagee
Stephen H. Suagee
Staff Attorney

SHS/ib
112487ICWA.sen

MURROW INDIAN
CHILDREN'S HOME
Box 68, Bacone College Campus
MUSKOGEE, OKLAHOMA 74403

November 23, 1987

To: U.S. Senate Committee on Indian Affairs

From: Oklahoma Indian Child Welfare Association

Re: Oversight Hearings on the Indian Child Welfare Act, PL 95-608

RECOMMENDATIONS AND COMMENTS ON PROPOSED AMENDMENTS

The Legislative/Funding Committee of the Oklahoma Indian Child Welfare Association has researched proposed amendments to the Indian Child Welfare Act and the OICWA at its most recent quarterly session has approved the following report to you.

We respectfully request your consideration of our recommendations. Our recommendations are based on reports previously presented to your committee and reviewed by the OICWA from Three Feathers Associates Inc. and the Association on American Indian Affairs, Inc. (copies of each are both attached). We support the additions/changes/delitions proposed by both attached reports.

However we would suggest several additional changes be made. We have listed these changes in relation to those suggested by the Association on American Indian Affairs Inc. They are referenced by Section number and page number in correspondence with their report.

We also wish to take this opportunity to strongly advocate for field hearings by your committe and that Oklahoma be designated as a site for such hearings. The Oklahoma Indian Child Welfare Association has functioned effectively for over five years as an advocacy and networking organization for all tribes and organizations in Oklahoma related to Indian Child Welfare issues. Our member tribes and organizations could provide valuable testimony from the "front lines" of Indian Child Welfare Act implementation. Your time in Oklahoma would be well spent.

Thank you very much for your consideration in this very important matter.

Sincerely,

Anita L Phillips

Anita L. Phillips, MSW
President
Oklahoma Indian Child Welfare Assoc.

November 23, 1987

SUGGESTED AMENDMENTS TO THE INDIAN CHILD WELFARE ACT OF 1978

AS PRESENTED BY THE OKLAHOMA INDIAN CHILD WELFARE ASSOCIATION

In addition to and correlated with the attached amendments from the Association on American Indian Affairs, Inc. (unless a specific change is noted below, each section/subsection of the AAIA report has the endorsement of the OICWA.)

Definitions #9 (page5)

9. Indian "Tribe" means any Indian Tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary because of their status as Indians, including any Alaska Natives villiages as defined in Section 3(c) of the Alaska Native Claims Act (85 Stat.688, 689), as amended, those tribes, bands, nations or groups terminated since 1940, and for the purposes of Sections 101(c), 102, 103, 104, 105, 106, 107, 110, 111, and 112 of this act. Keep those tribes, bands, nations or other organized groups that are recognized now or in the future by the government of Canada or any province or territory thereof, and add Mexico "border-tribes".

Section 103(b) (page 13)

B. The Secretary shall appropriate additional funding which shall be sufficient to pay for qualified witnesses retained on behalf of the indigent parent or custodian.(or other such language.)

Section 103(g) (page 15)

G. Evidence that shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse or non-conforming social behavior shall constitute clear and convincing evidence, or evidence of a reasonable doubt, that custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. To meet the burden of proof, the evidence must show the direct casual relationship between particular conditions and the serious emotional damage to the child that is likely to result.

Section 108 (page 25-26)

Section 108. We feel that where possible the biological parents request for anonymity be protected. However, the adopted child must have access to a menimal amount of information which ensures his rights which flow from tribal membership.

Section 112(a) (page 31)

A. Suggest naming the OICW Association from Muskogee and Anadarko areas make up the three member Indian Child Welfare Committees - three from each area office.

Section 112(b) (page 31-32)

B. Change paragraph (2) to leave out the 10,000 Indian population requirement. Some states may not have 10,000 Indians.

Section 113 (a) (8) (page 33)

8. Guidance, legal representation, and advice in Indian families and Tribes involved in tribal, state or federal child custody proceedings, provide that Congress shall appropriate additional funding to provide for said legal representation.

Section 115(b)

B. A minimal acceptable funding level shall be set at 40 million.

BLACKFEET NATION
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EXECUTIVE COMMITTEE

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November 5, 1987

Daniel K. Inouye
Chairman
Senate Select Committee
on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator Inouye:

The Blackfeet Tribe has been actively negotiating an Indian Child Welfare Act Agreement with the State of Montana for the last year. Although we have now informally established a working relationship, we have been disappointed in the State's refusal to negotiate in a number of areas.

We have found that all of these areas are addressed and clarified in the Indian Child Welfare Act Amendments and Indian Social Services Assistance Act of 1987 proposed by the Association on American Indian Affairs.

The Blackfeet Tribal Business Council therefore decided that the Blackfeet Tribe supports the two sets of drafts legislation prepared by the Association, and we urge your committee to prepare an appropriate Bill.

We anticipate that the introduction of such a Bill would enable us to bring up items in our discussion with the State, where discussion was previously cut off because of the State's refusal to change their established positions.

Please submit this letter into the record of the oversight hearing on the Indian Child Welfare Act to be held November 10, 1987.

We very much look forward to testifying on an Indian Child Welfare Act Amendment Bill, and we plan at that time to submit detailed testimony.

Sincerely,

Earl Old Person, Chairman
Blackfeet Tribal Business Council
Browning, Montana 59417

BOYS TOWN
"He ain't heavy, Father ... he's m' brother"

October 28,1987

The Honorable Daniel K. Inouye
United States Senator
722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

As you probably know, Father Flanagan's Boys' Home (more popularly known as Boys Town) has been in the business of offering shelter, education spiritual incentive and rehabilitative services to troubled, abused and neglected children for over seventy years.

In recent times, we have begun to extend our services beyond our Nebraska site to mini satellite campuses in other parts of the nation; we have introduced a training and technical assistance program for other child care institutions throughout the country which wish to reorganize their operations along the lines of the Boys Town model; and we have established a specialized hospital (the Boys Town National Institute For Communication Disorders in Children) which treats over 8,500 youngsters annually.

Since 1979, we have expanded our residential care services to include girls. Ten new homes (cottages) for girls will be completed by the end of this year, allowing us to look after approximately 150 girls at a time.

Father Val J. Peter, who has served as our executive director for a little over two years now, feels that this impressive expansion and Boys Town's long established worldwide renown in the field of child care give him both a unique opportunity and a special obligation to serve as a national spokesman for handicapped, homeless and abused kids wherever they may be.

It is in the spirit of this obligation that we turn to you for assistance.

In order to allow Father Peter to have a clear understanding of the national picture (viewed from the distinct perspectives of fifty individual states), we would like you to list (and briefly describe) the two or three most pressing youth and family related issues currently under discussion in the state of Hawaii.

Father Val J. Peter, JCD, STD, Executive Director (402) 498-1111

FATHER FLANAGAN'S BOYS' HOME BOYS TOWN, NEBRASKA 68010

The Honorable Daniel K. Inouye
October 27, 1987
Page 2

What, if anything, is the United States Congress currently doing to solve these problems?

Do you anticipate legislative action in those areas in the course of next year's Congressional session?

The information we gather in this way will greatly assist Father Peter in setting the proper course for a myriad of Boys Town programs and in lending meaningful and timely assistance to children and child care providers wherever such assistance is called for.

Your prompt response would be of immense value to us.

Thank you in advance for your kind cooperation, I am

Very truly yours,

Stephen E Szmrecsanyi PhD

Stephen Szmrecsanyi, PhD
Legislative Assistant to
the Executive Director

SS/kb

SOUTHERN CALIFORNIA INDIAN CENTER, INC.
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20 November 1987

The Honorable Daniel K. Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator Inouye:

It was a great honor to have the opportunity to share with you, the Southern California Indian communities concerns about the Indian Child Welfare Act (ICWA). It is our hope that this testimony will shed light to the ICWA needs of the largest urban Indian community in the United States.

As you are aware American Indian people suffer the worst socio-economic conditions of any ethnic group in our country. Among which are the lowest education levels and highest drop out rates. In fact, High school drop out rates are twice the national average.

Characteristics gathered in 1986, in regards to Southern California Indian Center client services indicate, over 30% of the clients served did not have a high school diploma or GED. Over 50% of the clients were in need of basic adult education or learning skills upgrading. Over 70% of the clients served were economically disadvantaged.

Based on the SCIC survey on clients served, there is significant need demonstrated for basic adult education, basic skills up-grading, GED preparation classes, as well as instructional and counseling services which provide encouragement for continued education.

We recognize that education is a key ingredient to achieving self-sufficiency therefore, we have applied for funds under the Indian Education Act, Title IV-Part B (CFDA No. 84.061A) and Title IV-Part C (CFDA No. 84.062).

20 November 1987
Page 2

Because we are the largest urban Indian community, our problems with illiteracy are severe and warrant immediate attention.

We would like to request your support in our efforts to assist American Indian people become self-sufficient. We respectfully request that you contact the office of Indian Education (Washington, D.C.) and support our need for educational funds.

We would like to express our appreciation in advance for your support and respectfully ask that you send us a written response.

Respectfully,

John Castillo

John Castillo M.S.W.
Planner, Southern Calif. Indian Center
Chairman, Indian Child Welfare
Task Force

THE NAVAJO DIVISION OF SOCIAL WELFARE

P.L.93-638 SOCIAL SERVICES CONTRACTS

BACKGROUND

The Navajo Division of Social Welfare has several concerns about the manner in which **social services contracts** under Public Law 93-638 are facilitated by the Bureau of Indian Affairs (BIA).

Chief among these concerns is the tendency toward excessively restrictive regulations promulgated by BIA governing the designation of funds permitted for administration vis-a-vis funds allowed for direct services.

The Navajo Division of Social Welfare is capable and willing to administer programs with greater efficiency than is now possible under BIA regulations. **The Tribe advocates the development of regulations which designate 10 percent of program funds as the maximum share to be spent on administration.** Within that 10 percent, the Tribe should be permitted to allocate funds internally as it determines best for the purpose of meeting the Navajo Nation's heavy caseload demands on P.L.93-638 programs.

Basically, the Tribe's experience has shown that greater flexibility in the administration of these programs in likely to improve the actual delivery of services. The Tribe recognizes the need for BIA to maintain overview of the expenditure of these funds each fiscal year, and the Tribe accepts as reasonable the authority of BIA to establish general parameters on the use of funds. The present situation, however, is too restrictive. **The real ability of the Tribe to deliver services and maintain minimum standards for the caseload-caseworker ratio has been seriously impeded by insufficient administrative funding and confusing BIA procedures.**

Similarly, a clearer explanation of "monitoring" vis-a-vis "technical assistance" is needed.

The Tribe has asked BIA to provide clear, written definitions of these categories so that the Tribe may most efficiently plan its programs and comply with regulations. This request has not been adequately addressed by the BIA.

In Fiscal Year 1987, the BIA allocated $2,632,000 to the Navajo Nation for administration of P.L.93-638 social services; the total amount allocated for these services was nearly $32.8 million.

The Tribe now maintains **110** administrative and direct services positions for the operation of P.L.93-638 social services. Two years ago, an analysis undertaken by the Tribe estimated that **138** positions were needed simply to meet the caseload demands at that time (101 for direct services, 20 supervisors, 5 other administrators, and 12 for clerical support).

Using the present 110 positions, however, the Division of Social Welfare serves an average of 25,000 individuals each month. This is an extremely high caseload given the number of personnel permitted under the BIA funding categories.

The state of New Mexico, for similar social service programs, maintains an average of 20 to 30 cases per social worker; the Navajo Division of Social Welfare is forced to maintain an average of 50 to 70 cases per social worker.

RECOMMENDATIONS

The Navajo Division of Social Welfare urges that new regulations on the designation of funds for the delivery of social services under P.L.93-638 contracts be developed.

- A broader discretion for the Tribe in the use of administrative funds;
- Clearer and fuller descriptions of categories of funding and the activities permissible under such funding, determined and published in advance of the applicable fiscal year;
- Direct involvement by representatives of Tribal governments in the adoption of these descriptions, with provision for appropriate public comment and for continuing consultation with the Tribe in the implementation of these determinations;
- The establishment of a 10 to 15 percent administrative cost ceiling for social services under P.L.93-638 contracts, with the automatic conversion of any unused administrative funds for the purposes of direct services.

The above recommendations are entirely consistent with the scope and intent of P.L.93-638, as well as with the President's February 1983 policy statement on Indian self-determination and the need to develop government-to-government relations.

The Navajo Nation particularly has embarked on a course of greater self-determination and decreased dependency on the Federal government. The Tribe has amply demonstrated its ability and its desire to administer these programs at the local level with more efficiency than possible with the present level of Federal administrative restrictions.

August 6, 1987

THE NAVAJO DIVISION OF SOCIAL WELFARE

The Indian Child Welfare Act (P.L.95-608)

The Navajo Nation does not receive its fair share of Indian Child Welfare grants (ICWA) because of the funding formula used by the Bureau of Indian Affairs (BIA).

The BIA method completely disregards the size of the Navajo population. Even though the Tribe has a Reservation population of nearly 200,000, it cannot receive any more ICWA funds than a tribe having a population of slightly over 15,000. The regulation establishes a maximum grant of $300,000 for the Tribe -- the same as for a tribe with a population of 16,000, for example.

This $300,000 ceiling is merely twice that allowed to a tribe with a population of only 7,500 -- a fraction of the size of the Navajo Nation.

Over 50 percent of the Tribe's population is age 19 or under. This high percentage of young people, combined with the total size of the population, underscores the inadequacy of the ICWA formula employed by the BIA. Basically, the method denies the reality of the Tribe's demographics and impedes the Tribe's availibility to implement ICWA as Congress intended.

The Navajo Division of Social Welfare urgently recommends that this formula be changed to provide the necessary level of funding to the Tribe. The Division has been successful in bringing together families and attending to the immediate needs of ICWA recipients in well over 80 percent of its caseload, and is committed to improving even further the delivery of this important service.

The Tribe also strongly supports the $8.8 million appropriated for ICWA by the House Appropriations Committee for Fiscal Year 1988. This critical program must not be reduced below this level.

August 6, 1987

NAVAJO DIVISION OF SOCIAL WELFARE

SOCIAL SERVICES BLOCK GRANTS -- TITLE XX

The Navajo Division of Social Welfare believes that present statutory language limiting the social services block grant program to states should be amended to allow Indian tribes to be treated as states for the purposes of receiving and administering these grants.

Tribes presently are able to receive portions of the grants indirectly, at the discretion of state governments and after the state has removed a portion of the funding for administration. Since it is the tribal government, and not to state, that actually delivers the services the block grant, and as the Tribe administers funding for other programs (by grant and by contract), it is the position of the Tribe that there is no valid reason for continuing the practice of denying social services block grants to Indian tribes.

The Navajo Division of Social Welfare is aware that the U.S. Department of Health and Human Services (HHS) supports amending Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), and the Tribe supports HHS's efforts to change this particular provision of the law.

The Navajo Division of Social Welfare also favors the consolidation of this grant process with the Low-Income Home Energy Assistance Program (LIHEAP) as described in the June 1985 HHS proposal to amend the Act. This proposal would allow broad latitude to the administering agency (the Tribe) to allocate funds from these two programs in the most effective manner as determined at the local level. Such a consolidation would tend to reduce administrative costs and increase the efficiency of actual service delivery.

August 6, 1987

Indian Child and Family Services

The Indian Child Welfare Consortium

November 6, 1987

Senator Daniel Inouye
Chairman
Senate Select Committee on Indian Affairs
Room 838, Hart Senate Office Building
Washington, D.C. 20510-6450

RE: Indian Child Welfare Act Oversight Hearings

Dear Senator Inouye,

I understand that there will be no public testimony during the Indian Child Welfare Act Oversight Hearings. Therefore, our testimony is written and submitted on behalf of the Indian Child and Family Services program to the Senate Select Committee on Indian Affairs.

The Indian Child and Family Services program began in 1980, funded by the initial appropriation of Title II funds. Two small California Mission Indian tribes formed a consortium in an effort to implement a Title II ICW program in San Diego County, California.

Since that first small grant, the ICFS consortium has received continuous Title II funding and has increased by 12 additional tribes in San Diego and Riverside counties. In addition, three Indian organizations are also members of the consortium. We are also providing a limited amount of ICW casework in Orange and Los Angeles counties through a one-year grant with the California State Department of Social Services.

Our agency has grown tremendously in expertise and credibility over the past seven years. We have become licensed as one of the only state-licensed Indian foster family agencies in this state and we are becoming licensed as an adoption agency. All of our direct services staff is made up of Indian persons who have graduate and post-graduate degrees. We have been responsible for providing ICWA training to several hundred social workers as well as providing ICW advocacy for the small tribes and urban Indians in our area. We have worked to provide ICW services for Indian families and children involved in foster care and adoption and are currently managing casework involving approximately 100 Indian children.

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Los Angeles County
1125 W. 6th Street, Suite 101
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(213) 977-1366

Senate Select Committee on Indian Affairs
November 6, 1987

Our achievements have been numerous and we are proud to relate them. However, in spite of the good intentions of the Indian Child Welfare Act, the road to our achievements has been a seven-year uphill struggle. We have been hindered each step of the way through a variety of forces as I will explain.

1. The Title II funding process is arbitrary at best. Because of the competitition for funds, our program, as with all ICWA programs, works with the knowledge that each year may be the last, depending on the funds appropriated by Congress for Title II programs; depending on the committee who reviews the ICW proposals at the BIA Area Office. Then, once funded, our security becomes hinged on the reliability of the Bureau Area Office. In every year of our program's existence our Requests for Reimbursement have been lost, delayed or simply overlooked at least one time per year. This has caused the near closure of our program on three occasions when we did not receive a timely reimbursement from the BIA. We are expected to maintain current records and reports for the Bureau, yet they in turn can cause senseless delays of the funds which are needed to maintain our program.

Another problem with the funding process involves the committees which review and make recommendations to fund ICW projects. A program may receive excellent reviews one year, then receive negative reviews the following year for proposing to continue a similar program, simply because the reviewers are different, inexperienced or biased.

The funding process almost appears to be a lottery with the luck of the draw. There is no system for assuring that all Indian people will have access to the benefits of Public Law 95-608. For example, in the state of California, the state with the largest population of Indian people (200,000), there are four ICW programs: Indian Child and Family Services, the San Francisco Indian Center, Toiyabe, Hoopa and the Consortium of Coastal Rancherias at Trinidad.

In other words, there is one ICW program covering two counties in southern California (ICFS); there is no Indian child welfare program in the Los Angeles area which has over 50,000 Indian people; there is one small program in central California serving the Shoshone, Washo and Paiute tribes (Toiyabe); there is one program in the San Francisco Bay area where over 100,000 Indian people reside (S.F. Indian Center); there is one program serving the Hoopa tribe in northern California and there is one program in the far northwest corner of California serving three tribes there (Consortium of Coastal Rancherias).

Thus, out of 122 tribes in the state of California, only 21 are receiving direct ICW services. Our program--Indian Child and Family

Services --serves 14 of those tribes. What about the remaining 101 tribes? Who assures that their children will not be permanently removed from them through culturally insensitive social work practices?

2. The issue of state compliance with the Indian Child Welfare Act is a major stumbling block in the Act's implementation. Ignorance of the law by social workers, particularly in an area such as California where there is a large population of American Indians, creates an impossible situation for assuring that the law is followed and benefits Indian people. A mechanism needs to be established whereby states can be monitored and sanctioned for not implementing the Act.

3. Statewide ICWA training is one method to assure compliance with the law. A 1983 statewide survey conducted by the California State Department of Social Services showed that this state was (is) 85-95% out-of-compliance with the Indian Child Welfare Act! Our agency has spent a great deal of money in the training of county social workers about the Indian Child Welfare Act and their responsibilities in following it. It does not make sense that small programs such as ours must use precious funding for the training of county social workers about a federal law. Yet, because there is no statewide ICWA training by the Department of Social Services and because of the constant turnover of county social workers, if we don't persist with our training efforts, our local social workers become even more ignorant of the law.

The ICWA amendments drafted by the Association on American Indian Affairs addresses these and other concerns. We fully support these amendments and urge the Senate Select Committee on Indian Affairs to also support the amendments.

The Indian Child Welfare Act, although it doesn't address land, water, or other tribal economic issues, is one of the most important pieces of legislation to impact the future of all Indian tribes.

In our work we are able to witness the positive results of the ICWA to keep Indian families together, but we also witness continuing violations of the law. It is imperative that this law continue to be supported by Congress. Your support should include the amendments as drafted by AAIA, as well as the financial support to assure continuation of Indian Child Welfare Projects.

Thank you for considering this testimony during the Indian Child Welfare Act Oversight hearings.

Sincerely,

Rose-Margaret Orrantia
Director

Corporation for American Indian Development

American Indian Center • 225 Valencia Street • San Francisco, CA 94103-2398

STATEMENT OF THE CORPORATION FOR
AMERICAN INDIAN DEVELOPMENT, INC.,
PRESENTED BY PHIL TINGLEY, MSW, MANAGER,
HUMAN DEVELOPMENT DIVISION

BEFORE

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

IN

THE NOVEMBER 10, 1987 OVERSIGHT HEARING

ON

THE INDIAN CHILD WELFARE ACT OF 1978

Mr. Chairman and Committee Members:

We thank you for the privilege of addressing the Committee regarding Title I and Title II of the Indian Child Welfare Act of 1978. Following are comments concerning what we feel are important issues that should be addressed as part of this Congressional oversight process:

The current formula used by the Bureau of Indian Affairs (BIA) to distribute Title II, Indian Child Welfare Act (ICWA) funds nationally is not consistent on a nationwide basis. This impacts California rather severely in that although California has the largest Indian population of any state, the national funding allocation plan does not reflect this fact.

Therefore, of the over 200,000 American Indians residing in California, only about one-fourth, or 57,000 (Indian Health Services estimate), live within an area where they have access to Title II ICWA program services.

The Area Grant Review process of the BIA also is not consistent on a nationwide basis, nor does it take into account specific demographic differences.

Looking at this issue with a more localized perspective, one must then note that one result of this inconsistency has been that of the 122 federally-recognized tribes in California, only 18 receive Title II services; and of the 57 counties within the State of California, only 12 are within the service jurisdiction of an existing Title II program.

By not taking into account demographic differences, additional inconsistencies occur. Since the land-base of most California Tribes is so small, many of their citizens must live in "near-reservation" areas, which creates a multitude of jurisdictional problems, especially when no Title II program exists to help mediate these problems.

Also unique to California, the majority of the state's Indian population (85-95%) reside in off-reservation urban centers. In most of the state's major urban centers (as an example, the Los Angeles area), there are no Title II programs or services.

Title II programs usually are the only local means for the provision of preventative services to Indian children and their families. They are also usually the only means of monitoring for state compliance to the provisions of Title I of the ICWA.

Specific to the matter of compliance, state and county welfare agencies nationally are not providing outreach services to insure that there are sufficient Indian foster homes available for temporary or long-term placement of Indian children when no extended family or tribally licensed foster home placement exists. States are thereby failing to comply with the foster care placement criteria of Title I of the ICWA.

In light of this and other problems, a national enforcement mechanism needs to be established whereby states can be monitored and penalized for not implementing the provisions of Title I of the ICWA. A system could be established based upon the current model that exists nationally for child abuse.

An additional significant contribution to the implementation of Title I provisions could be the allocation of funds for training state and county juvenile and family court judges, court workers and county welfare workers. If this effort were to be undertaken, it must be understood that, due to the high staff turnover at the county court and welfare agency level, this effort must be on-going. A more cost effective approach (for the federal government), however, might be to require that juvenile level court judges attend an ICWA certification course at the National Judicial College.

State court and county welfare workers could also be required to obtain ICWA certification as part of their licensure requirement. Most often, a single social work individual at the county welfare level will have the duty of being the ICWA "expert" fall upon them. An across-the-board national ICWA certification process would alleviate this problem, and also help assure that the provisions of Title I are implemented nationwide.

In reviewing and evaluating the operation of Title II programs specifically, a number of problems also require discussion.

Title II program staff are required to provide state court evaluations and assessments, provide services to victims of child abuse, neglect, domestic violence and also provide preventative services. Yet the BIA has set an administrative policy stating that no funds may be used for mental health services. Their justification for this policy is that the Indian Health Services (IHS) provides these services.

In reality, off-reservation populations are not eligible for these services due to IHS policy. Existing state mental health programs, especially those in urban areas, have six week to six month (the latter being most common) waiting lists for services. In reservation areas where IHS services do exist, there is no reciprocity from IHS and state mental health workers to tribal ICWA workers, in terms of the sharing of information (with client consent) for treatment purposes and for the coordination of services.

In both reservation and off-reservation populations, there are second and third generation dysfunctional individuals and families who have never received mental health services. A provision to allow Title II ICWA programs to provide mental health services is sorely needed.

Specific to both Title I and Title II provisions, it must be noted that there are also a number of Indian children that the ICWA fails to protect.

Children who are members of state-recognized tribes or of tribes whose federal status is pending are excluded under current provisions of the ICWA. Congress should consider an extention of the basic human rights contained within the ICWA to these children.

There are also many Canadian-Indian children who are removed from their homes while their families reside within the United States. The Jay Treaty defines Canadian Indian citizens (treaty or status) as having the same rights as United States Indian (treaty) citizens while they reside within the United States. It has been the BIA's policy, however, that no Title II funds may be used to protect the rights of these children and that Title I provisions do not apply to them. Since the United States has extended the political definition of the term "Indian" to Canadian Indians through this international agreement known as the Jay Treaty, and since the United States Constitution refers to treaties as being "the highest law of the land," it would seem that Congress must provide the means to allow for the ICWA to conform to constitutional and international law in this matter.

The Indian Child Welfare Act will have been passed for ten years in 1988 and the application of the law has been tested. Some states have still taken no action to implement this federal law. It is clearly time for the provisions of this law to be reviewed, analyzed and strengthened.

We thank you for your consideration in this matter of such vital importance to the children and families of our indigenous nation-states.